

512--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. CUSICK, TITONE -- read once and referred to the Committee on Transportation -- recommitted to the Committee on Transportation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law, in relation to a demonstration program relating to the installation of roadside and bus mounted high occupancy vehicle and bus lane enforcement cameras on the Staten Island Expressway; 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 223-a to read as follows:
3 S 223-A. HIGH OCCUPANCY VEHICLE AND BUS LANE ENFORCEMENT CAMERA DEMON-
4 STRATION PROGRAM. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE
5 COMMISSIONER IS HEREBY AUTHORIZED AND EMPOWERED TO ESTABLISH A DEMON-
6 STRATION PROGRAM, ON THE STATEN ISLAND EXPRESSWAY, IMPOSING MONETARY
7 LIABILITY ON THE OWNER OF A VEHICLE FOR FAILURE, BETWEEN THE HOURS OF
8 SEVEN O'CLOCK IN THE ANTE MERIDIEM AND SEVEN O'CLOCK IN THE POST MERI-
9 DIEM, OF AN OPERATOR THEREOF TO COMPLY WITH APPLICABLE HIGH OCCUPANCY
10 VEHICLE AND BUS LANE PRIORITY LAWS. THE DEPARTMENT OF TRANSPORTATION,
11 FOR PURPOSES OF IMPLEMENTATION OF SUCH PROGRAM, SHALL BE AUTHORIZED TO
12 INSTALL AND OPERATE ROADSIDE AND BUS MOUNTED BUS LANE ENFORCEMENT
13 CAMERAS ON NO MORE THAN ONE HUNDRED BUSES OR ROADSIDE LOCATIONS OPERATED
14 BY THE DEPARTMENT.
15 2. THE OWNER OF A VEHICLE SHALL BE LIABLE FOR A PENALTY IMPOSED PURSU-
16 ANT TO THIS SECTION IF SUCH VEHICLE WAS USED OR OPERATED WITH THE
17 PERMISSION OF THE OWNER, EXPRESS OR IMPLIED, IN VIOLATION OF ANY RULE OR
18 REGULATION RELATING TO USE OF A HIGH OCCUPANCY VEHICLE AND BUS LANE, AND

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

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1 SUCH VIOLATION IS EVIDENCED BY INFORMATION OBTAINED FROM A HIGH OCCUPAN-
2 CY VEHICLE AND BUS LANE ENFORCEMENT CAMERA; PROVIDED HOWEVER THAT NO
3 OWNER OF A VEHICLE SHALL BE LIABLE FOR A PENALTY IMPOSED PURSUANT TO
4 THIS SECTION WHERE THE OPERATOR OF SUCH VEHICLE HAS BEEN CONVICTED OF
5 THE UNDERLYING VIOLATION OF ANY RULE OR REGULATION ADOPTED BY THE
6 DEPARTMENT OF TRANSPORTATION OR THE COMMISSIONER.

7 3. FOR PURPOSES OF THIS SECTION, "OWNER" SHALL MEAN ANY PERSON, CORPO-
8 RATION, PARTNERSHIP, FIRM, AGENCY, ASSOCIATION, LESSOR, OR ORGANIZATION
9 WHO AT THE TIME OF THE ISSUANCE OF A NOTICE OF VIOLATION IN WHICH A
10 VEHICLE IS OPERATED:

11 (A) IS THE BENEFICIAL OR EQUITABLE OWNER OF SUCH VEHICLE; OR

12 (B) HAS TITLE TO SUCH VEHICLE; OR

13 (C) IS THE REGISTRANT OR CO-REGISTRANT OF SUCH VEHICLE WHICH IS REGIS-
14 TERED WITH THE DEPARTMENT OR THE DEPARTMENT OF MOTOR VEHICLES OF ANY
15 OTHER STATE, TERRITORY, DISTRICT, PROVINCE, NATION OR OTHER JURISDIC-
16 TION; OR

17 (D) USES SUCH VEHICLE IN ITS VEHICLE RENTING AND/OR LEASING BUSINESS;
18 OR

19 (E) IS AN OWNER OF SUCH VEHICLE AS DEFINED BY SECTION ONE HUNDRED
20 TWENTY-EIGHT OF THIS CHAPTER OR A DEALER OF SUCH VEHICLE AS DEFINED BY
21 SUBDIVISION (A) OF SECTION TWENTY-ONE HUNDRED ONE OF THIS CHAPTER.

22 4. FOR PURPOSES OF THIS SECTION, "HIGH OCCUPANCY VEHICLE AND BUS LANE
23 ENFORCEMENT CAMERA" SHALL MEAN A DEVICE INSTALLED ON A BUS OR A ROADSIDE
24 LOCATION WHICH AUTOMATICALLY PRODUCES TWO OR MORE PHOTOGRAPHS, TWO OR
25 MORE MICROPHOTOGRAPHS, A VIDEOTAPE OR OTHER RECORDED IMAGES OF EACH
26 VEHICLE AT THE TIME IT IS USED OR OPERATED IN VIOLATION OF ANY RULE OR
27 REGULATION RELATING TO USE OF HIGH OCCUPANCY VEHICLES AND BUS LANES.

28 5. A CERTIFICATE, SWORN TO OR AFFIRMED BY A TECHNICIAN EMPLOYED BY THE
29 DEPARTMENT OF TRANSPORTATION, OR A FACSIMILE THEREOF, BASED UPON
30 INSPECTION OF PHOTOGRAPHS, MICROPHOTOGRAPHS, VIDEOTAPE OR OTHER RECORDED
31 IMAGES PRODUCED BY A HIGH OCCUPANCY VEHICLE AND BUS LANE ENFORCEMENT
32 CAMERA, SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN.
33 ANY PHOTOGRAPHS, MICROPHOTOGRAPHS, VIDEOTAPE OR OTHER RECORDED IMAGES
34 EVIDENCING SUCH A VIOLATION SHALL BE AVAILABLE FOR INSPECTION IN ANY
35 PROCEEDING TO ADJUDICATE THE LIABILITY FOR SUCH VIOLATION IMPOSED PURSU-
36 ANT TO THIS SECTION.

37 6. AN OWNER LIABLE FOR A VIOLATION OF ANY RULE OR REGULATION RELATING
38 TO THE USE OF HIGH OCCUPANCY VEHICLE AND BUS LANES ADOPTED BY THE
39 DEPARTMENT OF TRANSPORTATION OR THE COMMISSIONER SHALL BE LIABLE FOR
40 MONETARY PENALTIES IN ACCORDANCE WITH A SCHEDULE OF FINES AND PENALTIES
41 TO BE PROMULGATED BY THE COMMISSIONER. THE LIABILITY OF THE OWNER
42 PURSUANT TO THIS SECTION SHALL NOT EXCEED THE ESTABLISHED FINE FOR EACH
43 VIOLATION; PROVIDED HOWEVER THAT AN ADDITIONAL PENALTY NOT IN EXCESS OF
44 TWENTY-FIVE DOLLARS SHALL BE IMPOSED FOR EACH VIOLATION FOR THE FAILURE
45 TO RESPOND TO A NOTICE OF LIABILITY WITHIN THE PRESCRIBED TIME PERIOD.

46 7. AN IMPOSITION OF LIABILITY UNDER THIS SECTION SHALL NOT BE DEEMED A
47 CONVICTION AS AN OPERATOR AND SHALL NOT BE MADE PART OF THE OPERATING
48 RECORD OF THE PERSON UPON WHOM SUCH LIABILITY IS IMPOSED NOR SHALL IT BE
49 USED FOR INSURANCE PURPOSES IN THE PROVISION OF MOTOR VEHICLE INSURANCE
50 COVERAGE.

51 8. (A) A NOTICE OF LIABILITY SHALL BE SENT BY THE DEPARTMENT WITHIN
52 FIFTEEN DAYS OF THE ALLEGED VIOLATION BY FIRST CLASS MAIL TO EACH PERSON
53 ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF ANY RULE OR REGU-
54 LATION RELATING TO THE USE OF HIGH OCCUPANCY VEHICLES AND BUS LANES
55 PURSUANT TO THIS SECTION. PERSONAL SERVICE ON THE OWNER SHALL NOT BE
56 REQUIRED. A MANUAL OR AUTOMATIC RECORD OF MAILING PREPARED IN THE ORDI-

1 NARY COURSE OF BUSINESS SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS
2 CONTAINED THEREIN.

3 (B) A NOTICE OF LIABILITY SHALL CONTAIN THE NAME AND ADDRESS OF THE
4 PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF ANY RULE OR
5 REGULATION RELATING TO THE USE OF HIGH OCCUPANCY VEHICLES AND BUS LANES
6 ADOPTED BY THE DEPARTMENT PURSUANT TO THIS SECTION, THE REGISTRATION
7 NUMBER OF THE VEHICLE INVOLVED IN SUCH VIOLATION, THE LOCATION WHERE
8 SUCH VIOLATION TOOK PLACE, THE DATE AND TIME OF SUCH VIOLATION AND THE
9 IDENTIFICATION NUMBER OF THE CAMERA WHICH RECORDED THE VIOLATION OR
10 OTHER DOCUMENT LOCATOR NUMBER.

11 (C) THE NOTICE OF LIABILITY SHALL CONTAIN INFORMATION ADVISING THE
12 PERSON CHARGED OF THE MANNER AND THE TIME IN WHICH HE OR SHE MAY CONTEST
13 THE LIABILITY ALLEGED IN THE NOTICE. SUCH NOTICE OF LIABILITY SHALL ALSO
14 CONTAIN A WARNING TO ADVISE THE PERSONS CHARGED THAT FAILURE TO CONTEST
15 IN THE MANNER AND TIME PROVIDED SHALL BE DEEMED AN ADMISSION OF LIABIL-
16 ITY AND THAT A DEFAULT JUDGMENT MAY BE ENTERED THEREON.

17 (D) THE NOTICE OF LIABILITY SHALL BE PREPARED AND MAILED BY THE
18 DEPARTMENT OR ITS DESIGNEE.

19 9. IF AN OWNER RECEIVES A NOTICE OF LIABILITY PURSUANT TO THIS SECTION
20 FOR ANY TIME PERIOD DURING WHICH THE VEHICLE WAS REPORTED TO THE POLICE
21 DEPARTMENT AS HAVING BEEN STOLEN, IT SHALL BE A VALID DEFENSE TO AN
22 ALLEGATION OF LIABILITY FOR A VIOLATION OF ANY RULE OR REGULATION RELAT-
23 ING TO THE USE OF HIGH OCCUPANCY VEHICLES AND BUS LANES PURSUANT TO THIS
24 SECTION THAT THE VEHICLE HAD BEEN REPORTED TO THE POLICE AS STOLEN PRIOR
25 TO THE TIME THE VIOLATION OCCURRED AND HAD NOT BEEN RECOVERED BY SUCH
26 TIME. FOR PURPOSES OF ASSERTING THE DEFENSE PROVIDED BY THIS SUBDIVISION
27 IT SHALL BE SUFFICIENT THAT A CERTIFIED COPY OF THE POLICE REPORT ON THE
28 STOLEN VEHICLE BE SENT BY FIRST CLASS MAIL, RETURN RECEIPT REQUESTED, TO
29 THE DEPARTMENT OF MOTOR VEHICLES OR ITS DESIGNEE.

30 10. IF THE OWNER LIABLE FOR A VIOLATION OF ANY RULE OR REGULATION
31 RELATING TO THE USE OF HIGH OCCUPANCY VEHICLES AND BUS LANES PURSUANT TO
32 THIS SECTION WAS NOT THE OPERATOR OF THE VEHICLE AT THE TIME OF THE
33 VIOLATION, THE OWNER MAY MAINTAIN AN ACTION FOR INDEMNIFICATION AGAINST
34 THE OPERATOR.

35 11. AN OWNER OF A VEHICLE TO WHICH A NOTICE OF LIABILITY WAS ISSUED
36 PURSUANT TO SUBDIVISION EIGHT OF THIS SECTION SHALL NOT BE LIABLE IF THE
37 MOTORIST DRIVING OR STOPPING IN A HIGH OCCUPANCY VEHICLE AND BUS LANE
38 WHILE:

39 (A) YIELDING RIGHT OF WAY TO AN EMERGENCY VEHICLE WITH ACTIVATED
40 WARNING LIGHTS OR SIREN,

41 (B) AT THE DIRECTION OF LAW ENFORCEMENT OR EMERGENCY SERVICE OFFICIALS
42 OR OTHER GOVERNMENT OFFICIALS AUTHORIZED TO STOP OR DIRECT TRAFFIC, OR

43 (C) WHEN AVOIDING ROAD OBSTRUCTIONS OR CONSTRUCTION OR OTHER HAZARDS.

44 12. AN APPEAL OF AN ADJUDICATION OF LIABILITY PURSUANT TO THIS SECTION
45 MAY BE TAKEN IN ACCORDANCE WITH THE APPLICABLE PROVISIONS RELATING TO
46 ADJUDICATION OF TRAFFIC INFRACTIONS IN SUCH CITY.

47 13. (A) AN OWNER WHO IS A LESSOR OF A VEHICLE TO WHICH A NOTICE OF
48 LIABILITY WAS ISSUED PURSUANT TO SUBDIVISION EIGHT OF THIS SECTION SHALL
49 NOT BE LIABLE FOR THE VIOLATION OF ANY RULE OR REGULATION RELATING TO
50 THE USE OF HIGH OCCUPANCY VEHICLES AND BUS LANES:

51 (I) IF PRIOR TO THE VIOLATION THE LESSOR HAS FILED WITH THE BUREAU AND
52 PAID THE REQUIRED FILING FEE IN ACCORDANCE WITH THE PROVISIONS OF
53 SECTION TWO HUNDRED THIRTY-NINE OF THIS TITLE; AND

54 (II) WITHIN THIRTY-SEVEN DAYS AFTER RECEIVING NOTICE OF THE DATE AND
55 TIME OF A LIABILITY, TOGETHER WITH THE OTHER INFORMATION CONTAINED IN
56 THE ORIGINAL NOTICE OF LIABILITY, THE LESSOR SUBMITS TO THE BUREAU THE

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

6 (B) FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION SHALL
7 RENDER THE OWNER LIABLE FOR THE PENALTY PRESCRIBED IN THIS SECTION.

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

14 14. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE LIABILITY
15 OF AN OPERATOR OF A VEHICLE FOR ANY VIOLATION OF ANY RULE OR REGULATION
16 PURSUANT TO THIS SECTION.

17 15. ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN AND
18 DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN THE COMMISSIONER SHALL
19 SUBMIT A WRITTEN REPORT ON THE DEMONSTRATION PROJECT IMPLEMENTATION
20 PURSUANT TO THIS SECTION TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE
21 SENATE AND THE SPEAKER OF THE ASSEMBLY ON THE RESULTS OF SAID DEMON-
22 STRATION PROGRAM. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO:

23 (A) A DESCRIPTION OF THE LOCATIONS WHERE HIGH OCCUPANCY VEHICLE AND
24 BUS LANE ENFORCEMENT CAMERAS WERE USED;

25 (B) THE NUMBER OF VIOLATIONS RECORDED IN THE AGGREGATE ON A DAILY,
26 WEEKLY AND MONTHLY BASIS;

27 (C) THE TOTAL NUMBER OF NOTICES OF LIABILITY ISSUED;

28 (D) THE NUMBER OF FINES AND TOTAL AMOUNT OF FINES PAID AFTER FIRST
29 NOTICE OF LIABILITY;

30 (E) THE NUMBER OF VIOLATIONS ADJUDICATED AND RESULTS OF SUCH ADJUDI-
31 CATIONS INCLUDING BREAKDOWNS OF DISPOSITIONS MADE;

32 (F) THE TOTAL AMOUNT OF REVENUE REALIZED; AND

33 (G) THE QUALITY OF THE ADJUDICATION PROCESS AND ITS RESULTS.

34 S 2. This act shall take effect on the one hundred twentieth day after
35 it shall have become a law and shall expire and be deemed repealed three
36 years after such effective date; provided that any rules or regulations
37 necessary for the timely implementation of this act are authorized to be
38 made on or before such effective date.