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

6653

2013-2014 Regular Sessions

I N A S S E M B L Y

April 12, 2013

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

AN ACT to amend the vehicle and traffic law, in relation to establishing in each county with a population of one million or more a demonstration program to enforce maximum speed limits by means of speed limit photo devices; 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:

Section 1. The vehicle and traffic law is amended by adding a new section 1180-b to read as follows:

S 1180-B. OWNER LIABILITY FOR FAILURE OF OPERATOR TO COMPLY WITH APPLICABLE MAXIMUM SPEED LIMIT. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH COUNTY WITH A POPULATION OF ONE MILLION OR MORE IS HEREBY AUTHORIZED AND EMPOWERED TO ESTABLISH A DEMONSTRATION PROGRAM IMPOSING MONETARY LIABILITY ON THE OWNER OF A VEHICLE FOR FAILURE OF AN OPERATOR THEREOF TO COMPLY WITH THE APPLICABLE MAXIMUM SPEED LIMIT IN SUCH COUNTY IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. SUCH COUNTY, FOR PURPOSES OF THE IMPLEMENTATION OF SUCH PROGRAM, SHALL OPERATE SPEED LIMIT PHOTO DEVICES WITHIN SUCH COUNTY AT NO MORE THAN FIFTY LOCATIONS AT ANY ONE TIME DURING ANY YEAR OF SUCH PROGRAM. SUCH SPEED LIMIT PHOTO DEVICES MAY BE STATIONARY OR MOBILE AND SHALL BE ACTIVATED AT LOCATIONS SELECTED BY SUCH COUNTY. SUCH SPEED LIMIT PHOTO DEVICES SHALL BE PLACED AT LOCATIONS BASED ON CRITERIA, INCLUDING BUT NOT LIMITED TO WHETHER THE LOCATION IS WITHIN A QUARTER MILE OF A SCHOOL, SPEEDING DATA, ACCIDENT HISTORY, PROXIMITY TO FACILITIES FOR SENIOR CITIZENS OR DISABLED PERSONS, ROADWAY GEOMETRY AND EQUITABLE GEOGRAPHIC DISTRIBUTION.

2. IN ANY COUNTY THAT HAS ESTABLISHED A DEMONSTRATION PROGRAM PURSUANT TO SUBDIVISION ONE 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

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

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IMPLIED, IN VIOLATION OF SUBDIVISION (C) OR (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE, AND SUCH VIOLATION IS EVIDENCED BY INFORMATION OBTAINED FROM A SPEED LIMIT PHOTO DEVICE; 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 VIOLATION OF SUBDIVISION (C) OR (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE.

3. SUCH DEMONSTRATION PROGRAM SHALL UTILIZE NECESSARY TECHNOLOGIES TO ENSURE, TO THE EXTENT PRACTICABLE, THAT PHOTOGRAPHS PRODUCED BY SUCH SPEED LIMIT PHOTO DEVICES SHALL NOT INCLUDE IMAGES THAT IDENTIFY THE DRIVER, THE PASSENGERS OR THE CONTENTS OF THE VEHICLE, PROVIDED, HOWEVER, THAT NO NOTICE OF LIABILITY ISSUED PURSUANT TO THIS SECTION SHALL BE DISMISSED SOLELY BECAUSE A PHOTOGRAPH OR PHOTOGRAPHS ALLOW FOR THE IDENTIFICATION OF THE DRIVER, THE PASSENGERS OR OTHER CONTENTS OF A VEHICLE, PROVIDED THAT SUCH COUNTY HAS MADE A REASONABLE EFFORT TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION.

4. SUCH DEMONSTRATION PROGRAM SHALL INCLUDE A PROHIBITION ON THE USE OR DISSEMINATION OF VEHICLES' LICENSE PLATE INFORMATION AND OTHER INFORMATION AND IMAGES CAPTURED BY SPEED CAMERAS EXCEPT AS REQUIRED TO ESTABLISH LIABILITY UNDER THIS SECTION OR COLLECT PAYMENT OF PENALTIES; EXCEPT AS REQUIRED TO RESPOND TO A REQUEST BY LAW ENFORCEMENT OFFICIALS PERTAINING TO A SPECIFIC ACCIDENT OR SPECIFIC INCIDENT OF ALLEGED CRIMINAL CONDUCT; OR EXCEPT AS OTHERWISE REQUIRED BY LAW.

5. FOR PURPOSES OF THIS SECTION, "OWNER" SHALL HAVE THE MEANING PROVIDED IN SECTION TWO HUNDRED THIRTY-NINE OF THIS CHAPTER. FOR PURPOSES OF THIS SECTION, "SPEED LIMIT PHOTO DEVICE" SHALL MEAN EQUIPMENT THAT TAKES A FILM OR DIGITAL CAMERA-BASED PHOTOGRAPH, MICROPHOTOGRAPH, VIDEO, OR OTHER RECORDED IMAGE WHICH IS LINKED WITH A VIOLATION DETECTION SYSTEM THAT SYNCHRONIZES THE TAKING OF SUCH IMAGE OF A VEHICLE AT THE TIME THE VEHICLE IS USED OR OPERATED IN VIOLATION OF SUBDIVISION (C) OR (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE.

6. A CERTIFICATE, SWORN TO OR AFFIRMED BY A TECHNICIAN EMPLOYED BY THE COUNTY IN WHICH THE CHARGED VIOLATION OCCURRED OR ITS VENDOR OR CONTRACTOR, OR A FACSIMILE THEREOF, BASED UPON INSPECTION OF PHOTOGRAPHS, MICROPHOTOGRAPHS, VIDEOTAPE OR OTHER RECORDED IMAGES PRODUCED BY A SPEED LIMIT PHOTO DEVICE, 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 THIS SECTION.

7. AN OWNER LIABLE FOR A VIOLATION OF SUBDIVISION (C) OR (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE SHALL BE LIABLE FOR MONETARY PENALTIES IN ACCORDANCE WITH A SCHEDULE OF FINES AND PENALTIES PROMULGATED BY THE PARKING VIOLATIONS BUREAU OF SUCH COUNTY; PROVIDED, HOWEVER, THAT THE MONETARY PENALTY FOR DRIVING AT A SPEED IN EXCESS OF THE MAXIMUM SPEED LIMIT BY TEN OR MORE MILES PER HOUR AND LESS THAN THIRTY MILES PER HOUR SHALL NOT EXCEED FIFTY DOLLARS, AND THE MONETARY PENALTY FOR DRIVING IN EXCESS OF THE MAXIMUM SPEED LIMIT BY THIRTY OR MORE MILES PER HOUR SHALL NOT EXCEED ONE HUNDRED 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.

8. AN IMPOSITION OF LIABILITY 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.

9. (A) A NOTICE OF LIABILITY SHALL BE SENT BY FIRST CLASS MAIL IN ACCORDANCE WITH THIS SECTION TO EACH PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF SUBDIVISION (C) OR (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE. 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.

(B) 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 (C) OR (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE, 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 SPEED LIMIT PHOTO DEVICE WHICH RECORDED THE VIOLATION OR OTHER DOCUMENT LOCATOR NUMBER.

(C) 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.

(D) THE NOTICE OF LIABILITY SHALL BE PREPARED AND MAILED BY THE AGENCY OR AGENCIES DESIGNATED BY SUCH COUNTY.

10. IF AN OWNER OF A VEHICLE RECEIVES A NOTICE OF LIABILITY PURSUANT TO THIS SECTION FOR ANY TIME PERIOD DURING WHICH SUCH 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 (C) OR (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE 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 AN ORIGINAL INCIDENT FORM ISSUED BY THE POLICE ON THE STOLEN VEHICLE BE SENT BY FIRST CLASS MAIL TO THE PARKING VIOLATIONS BUREAU OF SUCH COUNTY.

11. (A) AN OWNER WHO IS A LESSOR OF A VEHICLE TO WHICH A NOTICE OF LIABILITY WAS ISSUED PURSUANT TO SUBDIVISION NINE OF THIS SECTION SHALL NOT BE LIABLE FOR THE VIOLATION OF SUBDIVISION (C) OR (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE, 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 A 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.

(B) FAILURE TO COMPLY WITH SUBPARAGRAPH (II) OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL RENDER THE OWNER LIABLE FOR THE PENALTY PRESCRIBED IN THIS SECTION.

(C) WHERE THE LESSOR COMPLIES WITH THE PROVISIONS OF PARAGRAPH (A) 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 NINE OF THIS SECTION.

12. IF THE OWNER LIABLE FOR A VIOLATION OF SUBDIVISION (C) OR (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.

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

14. ANY COUNTY THAT ADOPTS A DEMONSTRATION PROGRAM PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL SUBMIT A REPORT ON THE RESULTS OF THE USE OF SPEED LIMIT PHOTO DEVICES TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY BY APRIL FIRST, TWO THOUSAND TWENTY. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO:

(A) A DESCRIPTION OF THE LOCATIONS WHERE SPEED LIMIT PHOTO DEVICES WERE USED;

(B) THE NUMBER OF VIOLATIONS RECORDED AT EACH SUCH LOCATION AND IN THE AGGREGATE ON A DAILY, WEEKLY AND MONTHLY BASIS;

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

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

(E) THE NUMBER OF VIOLATIONS ADJUDICATED AND RESULTS OF SUCH ADJUDICATIONS INCLUDING BREAKDOWNS OF DISPOSITIONS MADE;

(F) THE TOTAL AMOUNT OF REVENUE REALIZED BY SUCH COUNTY; AND

(G) 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 expire 5 years after such effective date when upon such date the provisions of this act shall be deemed repealed.