

7646--A

2015-2016 Regular Sessions

I N A S S E M B L Y

May 21, 2015

Introduced by M. of A. ABINANTI, BUCHWALD -- 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 and the public officers law, in relation to authorizing local authorities to establish demonstration programs, implementing railroad grade crossing monitoring systems by means of photo devices

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 135-a to read as follows:
3 S 135-A. RAILROAD GRADE CROSSING. A LOCATION WHERE RAILROAD TRACKS
4 INTERSECT A PUBLIC OR PRIVATE HIGHWAY, ROADWAY OR SIDEWALK.
5 S 2. The vehicle and traffic law is amended by adding a new section
6 1170-a to read as follows:
7 S 1170-A. OWNER LIABILITY FOR FAILURE OF OPERATOR TO OBEY SIGNAL INDI-
8 CATING APPROACH OF TRAIN. (A) 1. NOTWITHSTANDING ANY OTHER PROVISION OF
9 LAW, ANY LOCAL AUTHORITY IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND
10 AMEND A LOCAL LAW, ORDINANCE OR RESOLUTION ESTABLISHING A DEMONSTRATION
11 PROGRAM IMPOSING MONETARY LIABILITY ON THE OWNER OF A VEHICLE FOR FAIL-
12 URE OF AN OPERATOR THEREOF TO COMPLY WITH SECTION ELEVEN HUNDRED SEVENTY
13 OF THIS ARTICLE. SUCH DEMONSTRATION PROGRAM SHALL EMPOWER A LOCAL
14 AUTHORITY TO INSTALL AND OPERATE RAILROAD GRADE CROSSING PHOTO VIOLA-
15 TION-MONITORING DEVICES AT ANY RAILROAD SIGN OR SIGNAL.
16 2. SUCH DEMONSTRATION PROGRAM SHALL UTILIZE NECESSARY TECHNOLOGIES TO
17 ENSURE, TO THE EXTENT PRACTICABLE, THAT PHOTOGRAPHS PRODUCED BY SUCH
18 RAILROAD GRADE CROSSING PHOTO VIOLATION-MONITORING SYSTEMS SHALL NOT
19 INCLUDE IMAGES THAT IDENTIFY THE DRIVER, THE PASSENGERS OR THE CONTENTS
20 OF THE VEHICLE. PROVIDED, HOWEVER, THAT NO NOTICE OF LIABILITY ISSUED

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

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1 PURSUANT TO THIS SECTION SHALL BE DISMISSED SOLELY BECAUSE A PHOTOGRAPH
2 OR PHOTOGRAPHS ALLOW FOR THE IDENTIFICATION OF THE CONTENTS OF A VEHI-
3 CLE, PROVIDED THAT SUCH LOCAL AUTHORITY HAS MADE A REASONABLE EFFORT TO
4 COMPLY WITH THE PROVISIONS OF THIS PARAGRAPH.

5 (B) WITHIN THE JURISDICTION OF ANY SUCH LOCAL AUTHORITY WHICH HAS
6 ADOPTED A LOCAL LAW, ORDINANCE OR RESOLUTION PURSUANT TO SUBDIVISION (A)
7 OF THIS SECTION, THE OWNER OF A VEHICLE SHALL BE LIABLE FOR A PENALTY
8 IMPOSED PURSUANT TO THIS SECTION IF SUCH VEHICLE WAS USED OR OPERATED
9 WITH THE PERMISSION OF THE OWNER, EXPRESS OR IMPLIED, IN VIOLATION OF
10 SECTION ELEVEN HUNDRED SEVENTY OF THIS ARTICLE, AND SUCH VIOLATION IS
11 EVIDENCED BY INFORMATION OBTAINED FROM A RAILROAD GRADE CROSSING PHOTO
12 VIOLATION-MONITORING SYSTEM; PROVIDED, HOWEVER, THAT NO OWNER OF A VEHI-
13 CLE SHALL BE LIABLE FOR A PENALTY IMPOSED PURSUANT TO THIS SECTION WHERE
14 THE OPERATOR OF SUCH VEHICLE HAS BEEN CONVICTED OF THE UNDERLYING
15 VIOLATION OF SECTION ELEVEN HUNDRED SEVENTY OF THIS ARTICLE.

16 (C) FOR PURPOSES OF THIS SECTION, "OWNER" SHALL HAVE THE MEANING
17 PROVIDED IN ARTICLE TWO-B OF THIS CHAPTER. FOR PURPOSES OF THIS SECTION,
18 "RAILROAD GRADE CROSSING PHOTO VIOLATION-MONITORING SYSTEM" SHALL MEAN A
19 VEHICLE SENSOR INSTALLED TO WORK IN CONJUNCTION WITH A RAILROAD SIGN OR
20 SIGNAL WHICH AUTOMATICALLY PRODUCES TWO OR MORE PHOTOGRAPHS, TWO OR MORE
21 MICROPHOTOGRAPHS, A VIDEOTAPE OR OTHER RECORDED IMAGES OF EACH VEHICLE
22 AT THE TIME IT IS USED OR OPERATED IN VIOLATION OF SECTION ELEVEN
23 HUNDRED SEVENTY OF THIS ARTICLE.

24 (D) A CERTIFICATE, SWORN TO OR AFFIRMED BY A TECHNICIAN EMPLOYED BY
25 THE LOCAL AUTHORITY IN WHICH THE CHARGED VIOLATION OCCURRED, OR A
26 FACSIMILE THEREOF, BASED UPON INSPECTION OF PHOTOGRAPHS, MICROPHOTO-
27 GRAPHS, VIDEOTAPE OR OTHER RECORDED IMAGES PRODUCED BY A RAILROAD GRADE
28 CROSSING PHOTO VIOLATION-MONITORING SYSTEM, SHALL BE PRIMA FACIE
29 EVIDENCE OF THE FACTS CONTAINED THEREIN. ANY PHOTOGRAPHS, MICROPHOTO-
30 GRAPHS, VIDEOTAPE OR OTHER RECORDED IMAGES EVIDENCING SUCH A VIOLATION
31 SHALL BE AVAILABLE FOR INSPECTION IN ANY PROCEEDING TO ADJUDICATE THE
32 LIABILITY FOR SUCH VIOLATION PURSUANT TO A LOCAL LAW, ORDINANCE OR
33 RESOLUTION ADOPTED PURSUANT TO THIS SECTION.

34 (E) AN OWNER LIABLE FOR A VIOLATION OF SECTION ELEVEN HUNDRED SEVENTY
35 OF THIS ARTICLE PURSUANT TO A LOCAL LAW, ORDINANCE OR RESOLUTION ADOPTED
36 PURSUANT TO THIS SECTION SHALL BE LIABLE FOR MONETARY PENALTIES IN
37 ACCORDANCE WITH A SCHEDULE OF FINES AND PENALTIES TO BE ESTABLISHED IN
38 SUCH LOCAL LAW, ORDINANCE OR RESOLUTION. THE LIABILITY OF THE OWNER
39 PURSUANT TO THIS SECTION SHALL NOT EXCEED ONE HUNDRED DOLLARS FOR EACH
40 VIOLATION; PROVIDED, HOWEVER, THAT AN ADJUDICATING AUTHORITY MAY PROVIDE
41 FOR AN ADDITIONAL PENALTY OF NOT IN EXCESS OF TWENTY-FIVE DOLLARS FOR
42 EACH VIOLATION FOR THE FAILURE TO RESPOND TO A NOTICE OF LIABILITY WITH-
43 IN THE PRESCRIBED PERIOD OF TIME.

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

49 (G) 1. A NOTICE OF LIABILITY SHALL BE SENT BY FIRST CLASS MAIL TO EACH
50 PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF SECTION ELEV-
51 EN HUNDRED SEVENTY OF THIS ARTICLE PURSUANT TO THIS SECTION. PERSONAL
52 DELIVERY ON THE OWNER SHALL NOT BE REQUIRED. A MANUAL OR AUTOMATIC
53 RECORD OF MAILING PREPARED IN THE ORDINARY COURSE OF BUSINESS SHALL BE
54 PRIMA FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN.

55 2. A NOTICE OF LIABILITY SHALL CONTAIN THE NAME AND ADDRESS OF THE
56 PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF SECTION ELEV-

1 EN HUNDRED SEVENTY OF THIS ARTICLE PURSUANT TO THIS SECTION, THE REGIS-
2 TRATION NUMBER OF THE VEHICLE INVOLVED IN SUCH VIOLATION, THE LOCATION
3 WHERE SUCH VIOLATION TOOK PLACE, THE DATE AND TIME OF SUCH VIOLATION AND
4 THE IDENTIFICATION NUMBER OF THE CAMERA WHICH RECORDED THE VIOLATION OR
5 OTHER DOCUMENT LOCATOR NUMBER.

6 3. THE NOTICE OF LIABILITY SHALL CONTAIN INFORMATION ADVISING THE
7 PERSON CHARGED OF THE MANNER AND THE TIME IN WHICH HE OR SHE MAY CONTEST
8 THE LIABILITY ALLEGED IN THE NOTICE. SUCH NOTICE OF LIABILITY SHALL ALSO
9 CONTAIN A WARNING TO ADVISE THE PERSON CHARGED THAT FAILURE TO CONTEST
10 IN THE MANNER AND TIME PROVIDED SHALL BE DEEMED AN ADMISSION OF LIABIL-
11 ITY AND THAT A DEFAULT JUDGMENT MAY BE ENTERED THEREON.

12 4. THE NOTICE OF LIABILITY SHALL BE PREPARED AND MAILED BY THE LOCAL
13 AUTHORITY, OR BY ANY OTHER ENTITY AUTHORIZED BY SUCH LOCAL AUTHORITY TO
14 PREPARE AND MAIL SUCH NOTIFICATION OF VIOLATION.

15 (H) ADJUDICATION OF THE LIABILITY IMPOSED UPON OWNERS BY THIS SECTION
16 SHALL BE BY THE COURT HAVING JURISDICTION OVER TRAFFIC INFRACTIONS,
17 EXCEPT THAT IF SUCH LOCAL AUTHORITY HAS ESTABLISHED AN ADMINISTRATIVE
18 TRIBUNAL TO HEAR AND DETERMINE COMPLAINTS OF TRAFFIC INFRACTIONS CONSTI-
19 TUTING PARKING, STANDING OR STOPPING VIOLATIONS SUCH LOCAL AUTHORITY
20 MAY, BY LOCAL LAW, AUTHORIZE SUCH ADJUDICATION BY SUCH TRIBUNAL.

21 (I) IF AN OWNER RECEIVES A NOTICE OF LIABILITY PURSUANT TO THIS
22 SECTION FOR ANY TIME PERIOD DURING WHICH THE VEHICLE WAS REPORTED TO A
23 LAW ENFORCEMENT AGENCY AS HAVING BEEN STOLEN, IT SHALL BE A VALID
24 DEFENSE TO AN ALLEGATION OF LIABILITY FOR A VIOLATION OF SECTION ELEVEN
25 HUNDRED SEVENTY OF THIS ARTICLE PURSUANT TO THIS SECTION THAT THE VEHI-
26 CLE HAD BEEN REPORTED TO THE POLICE AS STOLEN PRIOR TO THE TIME THE
27 VIOLATION OCCURRED AND HAD NOT BEEN RECOVERED BY SUCH TIME. FOR PURPOSES
28 OF ASSERTING THE DEFENSE PROVIDED BY THIS SUBDIVISION IT SHALL BE SUFFI-
29 CIENT THAT A CERTIFIED COPY OF A POLICE REPORT ON THE STOLEN VEHICLE BE
30 SENT BY FIRST CLASS MAIL TO THE COURT HAVING JURISDICTION OR PARKING
31 VIOLATIONS BUREAU.

32 (J) 1. IN SUCH LOCAL AUTHORITY WHERE THE ADJUDICATION OF LIABILITY
33 IMPOSED UPON OWNERS PURSUANT TO THIS SECTION IS BY A COURT HAVING JURIS-
34 DICTION, AN OWNER WHO IS A LESSOR OF A VEHICLE TO WHICH A NOTICE OF
35 LIABILITY WAS ISSUED PURSUANT TO SUBDIVISION (G) OF THIS SECTION SHALL
36 NOT BE LIABLE FOR THE VIOLATION OF SECTION ELEVEN HUNDRED SEVENTY OF
37 THIS ARTICLE, PROVIDED THAT HE OR SHE SENDS TO THE COURT HAVING JURIS-
38 DICTION A COPY OF THE RENTAL, LEASE OR OTHER SUCH CONTRACT DOCUMENT
39 COVERING SUCH VEHICLE ON THE DATE OF THE VIOLATION, WITH THE NAME AND
40 ADDRESS OF THE LESSEE CLEARLY LEGIBLE, WITHIN THIRTY-SEVEN DAYS AFTER
41 RECEIVING NOTICE FROM THE COURT OF THE DATE AND TIME OF SUCH VIOLATION,
42 TOGETHER WITH THE OTHER INFORMATION CONTAINED IN THE ORIGINAL NOTICE OF
43 LIABILITY. FAILURE TO SEND SUCH INFORMATION WITHIN SUCH THIRTY-SEVEN
44 DAY TIME PERIOD SHALL RENDER THE OWNER LIABLE FOR THE PENALTY PRESCRIBED
45 BY THIS SECTION. WHERE THE LESSOR COMPLIES WITH THE PROVISIONS OF THIS
46 PARAGRAPH, THE LESSEE OF SUCH VEHICLE ON THE DATE OF SUCH VIOLATION
47 SHALL BE DEEMED TO BE THE OWNER OF SUCH VEHICLE FOR PURPOSES OF THIS
48 SECTION, SHALL BE SUBJECT TO LIABILITY FOR THE VIOLATION OF SECTION
49 ELEVEN HUNDRED SEVENTY OF THIS ARTICLE PURSUANT TO THIS SECTION AND
50 SHALL BE SENT A NOTICE OF LIABILITY PURSUANT TO SUBDIVISION (G) OF THIS
51 SECTION.

52 2. (I) IN SUCH LOCAL AUTHORITY WHICH HAS AUTHORIZED THE ADJUDICATION
53 OF LIABILITY IMPOSED UPON OWNERS BY THIS SECTION BY A PARKING VIOLATIONS
54 BUREAU, AN OWNER WHO IS A LESSOR OF A VEHICLE TO WHICH A NOTICE OF
55 LIABILITY WAS ISSUED PURSUANT TO SUBDIVISION (G) OF THIS SECTION SHALL

NOT BE LIABLE FOR THE VIOLATION OF SECTION ELEVEN HUNDRED SEVENTY OF THIS ARTICLE, 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) 1. IF THE OWNER LIABLE FOR A VIOLATION OF SECTION ELEVEN HUNDRED SEVENTY 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.

2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, NO OWNER OF A VEHICLE SHALL BE SUBJECT TO A MONETARY FINE IMPOSED PURSUANT TO THIS SECTION IF THE OPERATOR OF SUCH VEHICLE WAS OPERATING SUCH VEHICLE WITHOUT THE CONSENT OF THE OWNER AT THE TIME SUCH OPERATOR FAILED TO OBEY A RAILROAD SIGN OR SIGNAL INDICATING THE APPROACH OF A TRAIN. FOR PURPOSES OF THIS SUBDIVISION THERE SHALL BE A PRESUMPTION THAT THE OPERATOR OF SUCH VEHICLE WAS OPERATING SUCH VEHICLE WITH THE CONSENT OF THE OWNER AT THE TIME SUCH OPERATOR FAILED TO OBEY A RAILROAD SIGN OR SIGNAL INDICATING THE APPROACH OF A TRAIN.

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

(M) IN ANY SUCH LOCAL AUTHORITY WHICH ADOPTS A DEMONSTRATION PROGRAM PURSUANT TO SUBDIVISION (A) OF THIS SECTION, SUCH LOCAL AUTHORITY SHALL SUBMIT AN ANNUAL REPORT ON THE RESULTS OF THE USE OF A RAILROAD GRADE CROSSING PHOTO VIOLATION-MONITORING SYSTEM TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE JUNE FIRST, TWO THOUSAND EIGHTEEN AND ON THE SAME DATE IN EACH SUCCEEDING YEAR IN WHICH THE DEMONSTRATION PROGRAM IS OPERABLE. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO:

1. A DESCRIPTION OF THE LOCATIONS WHERE RAILROAD GRADE CROSSING PHOTO VIOLATION-MONITORING SYSTEMS WERE USED;

2. THE AGGREGATE NUMBER, TYPE AND SEVERITY OF ACCIDENTS REPORTED AT INTERSECTIONS WHERE A RAILROAD GRADE CROSSING PHOTO VIOLATION-MONITORING SYSTEM IS USED FOR THE YEAR PRECEDING THE INSTALLATION OF SUCH SYSTEM, TO THE EXTENT THE INFORMATION IS MAINTAINED BY THE DEPARTMENT;

3. THE AGGREGATE NUMBER, TYPE AND SEVERITY OF ACCIDENTS REPORTED AT INTERSECTIONS WHERE A RAILROAD GRADE CROSSING PHOTO VIOLATION-MONITORING SYSTEM IS USED, TO THE EXTENT THE INFORMATION IS MAINTAINED BY THE DEPARTMENT;

1 4. THE NUMBER OF VIOLATIONS RECORDED AT EACH INTERSECTION WHERE A
2 RAILROAD GRADE CROSSING PHOTO VIOLATION-MONITORING SYSTEM IS USED AND IN
3 THE AGGREGATE ON A DAILY, WEEKLY AND MONTHLY BASIS;

4 5. THE TOTAL NUMBER OF NOTICES OF LIABILITY ISSUED FOR VIOLATIONS
5 RECORDED BY SUCH SYSTEMS;

6 6. THE NUMBER OF FINES AND TOTAL AMOUNT OF FINES PAID AFTER FIRST
7 NOTICE OF LIABILITY ISSUED FOR VIOLATIONS RECORDED BY SUCH SYSTEMS;

8 7. THE NUMBER OF VIOLATIONS ADJUDICATED AND RESULTS OF SUCH ADJUDI-
9 CATIONS INCLUDING BREAKDOWNS OF DISPOSITIONS MADE FOR VIOLATIONS
10 RECORDED BY SUCH SYSTEMS;

11 8. THE TOTAL AMOUNT OF REVENUE REALIZED BY SUCH LOCAL AUTHORITY FROM
12 SUCH ADJUDICATIONS;

13 9. EXPENSES INCURRED BY SUCH LOCAL AUTHORITY IN CONNECTION WITH THE
14 PROGRAM; AND

15 10. QUALITY OF THE ADJUDICATION PROCESS AND ITS RESULTS.

16 (N) IT SHALL BE A DEFENSE TO ANY PROSECUTION FOR A VIOLATION OF
17 SECTION ELEVEN HUNDRED SEVENTY OF THIS ARTICLE PURSUANT TO A LOCAL LAW
18 OR ORDINANCE ADOPTED PURSUANT TO THIS SECTION THAT THE RAILROAD SIGNAL
19 INDICATIONS WERE MALFUNCTIONING AT THE TIME OF THE ALLEGED VIOLATION.

20 S 3. Subdivision 2 of section 87 of the public officers law is amended
21 by adding a new paragraph (p) to read as follows:

22 (P) ARE PHOTOGRAPHS, MICROPHOTOGRAPHS, VIDEOTAPE OR OTHER RECORDED
23 IMAGES PREPARED UNDER THE AUTHORITY OF SECTION ELEVEN HUNDRED SEVENTY-A
24 OF THE VEHICLE AND TRAFFIC LAW.

25 S 4. This act shall take effect on the thirtieth day after it shall
26 have become a law.