

5238--A

Cal. No. 653

2015-2016 Regular Sessions

I N S E N A T E

May 8, 2015

Introduced by Sens. MURPHY, CARLUCCI, LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- recommitted to the Committee on Transportation in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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

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

LBD10847-05-6

1 INCLUDE IMAGES THAT IDENTIFY THE DRIVER, THE PASSENGERS OR THE CONTENTS  
2 OF THE VEHICLE. PROVIDED, HOWEVER, THAT NO NOTICE OF LIABILITY ISSUED  
3 PURSUANT TO THIS SECTION SHALL BE DISMISSED SOLELY BECAUSE A PHOTOGRAPH  
4 OR PHOTOGRAPHS ALLOW FOR THE IDENTIFICATION OF THE CONTENTS OF A VEHI-  
5 CLE, PROVIDED THAT SUCH LOCAL AUTHORITY HAS MADE A REASONABLE EFFORT TO  
6 COMPLY WITH THE PROVISIONS OF THIS PARAGRAPH.

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

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

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

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

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

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

1 2. A NOTICE OF LIABILITY SHALL CONTAIN THE NAME AND ADDRESS OF THE  
2 PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF SECTION ELEV-  
3 EN HUNDRED SEVENTY OF THIS ARTICLE PURSUANT TO THIS SECTION, THE REGIS-  
4 TRATION NUMBER OF THE VEHICLE INVOLVED IN SUCH VIOLATION, THE LOCATION  
5 WHERE SUCH VIOLATION TOOK PLACE, THE DATE AND TIME OF SUCH VIOLATION AND  
6 THE IDENTIFICATION NUMBER OF THE CAMERA WHICH RECORDED THE VIOLATION OR  
7 OTHER DOCUMENT LOCATOR NUMBER.

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

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

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

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

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

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

1 LIABILITY WAS ISSUED PURSUANT TO SUBDIVISION (G) OF THIS SECTION SHALL  
2 NOT BE LIABLE FOR THE VIOLATION OF SECTION ELEVEN HUNDRED SEVENTY OF  
3 THIS ARTICLE, PROVIDED THAT:

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

7 (B) WITHIN THIRTY-SEVEN DAYS AFTER RECEIVING NOTICE FROM THE BUREAU OF  
8 THE DATE AND TIME OF A LIABILITY, TOGETHER WITH THE OTHER INFORMATION  
9 CONTAINED IN THE ORIGINAL NOTICE OF LIABILITY, THE LESSOR SUBMITS TO THE  
10 BUREAU THE CORRECT NAME AND ADDRESS OF THE LESSEE OF THE VEHICLE IDENTI-  
11 FIED IN THE NOTICE OF LIABILITY AT THE TIME OF SUCH VIOLATION, TOGETHER  
12 WITH SUCH OTHER ADDITIONAL INFORMATION CONTAINED IN THE RENTAL, LEASE OR  
13 OTHER CONTRACT DOCUMENT, AS MAY BE REASONABLY REQUIRED BY THE BUREAU  
14 PURSUANT TO REGULATIONS THAT MAY BE PROMULGATED FOR SUCH PURPOSE.

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

18 (III) WHERE THE LESSOR COMPLIES WITH THE PROVISIONS OF THIS PARAGRAPH,  
19 THE LESSEE OF SUCH VEHICLE ON THE DATE OF SUCH VIOLATION SHALL BE DEEMED  
20 TO BE THE OWNER OF SUCH VEHICLE FOR PURPOSES OF THIS SECTION, SHALL BE  
21 SUBJECT TO LIABILITY FOR SUCH VIOLATION PURSUANT TO THIS SECTION AND  
22 SHALL BE SENT A NOTICE OF LIABILITY PURSUANT TO SUBDIVISION (G) OF THIS  
23 SECTION.

24 (K) 1. IF THE OWNER LIABLE FOR A VIOLATION OF SECTION ELEVEN HUNDRED  
25 SEVENTY OF THIS ARTICLE PURSUANT TO THIS SECTION WAS NOT THE OPERATOR OF  
26 THE VEHICLE AT THE TIME OF THE VIOLATION, THE OWNER MAY MAINTAIN AN  
27 ACTION FOR INDEMNIFICATION AGAINST THE OPERATOR.

28 2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, NO OWNER OF A  
29 VEHICLE SHALL BE SUBJECT TO A MONETARY FINE IMPOSED PURSUANT TO THIS  
30 SECTION IF THE OPERATOR OF SUCH VEHICLE WAS OPERATING SUCH VEHICLE WITH-  
31 OUT THE CONSENT OF THE OWNER AT THE TIME SUCH OPERATOR FAILED TO OBEY A  
32 RAILROAD SIGN OR SIGNAL INDICATING THE APPROACH OF A TRAIN. FOR  
33 PURPOSES OF THIS SUBDIVISION THERE SHALL BE A PRESUMPTION THAT THE OPER-  
34 ATOR OF SUCH VEHICLE WAS OPERATING SUCH VEHICLE WITH THE CONSENT OF THE  
35 OWNER AT THE TIME SUCH OPERATOR FAILED TO OBEY A RAILROAD SIGN OR SIGNAL  
36 INDICATING THE APPROACH OF A TRAIN.

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

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

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

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

54 3. THE AGGREGATE NUMBER, TYPE AND SEVERITY OF ACCIDENTS REPORTED AT  
55 INTERSECTIONS WHERE A RAILROAD GRADE CROSSING PHOTO VIOLATION-MONITORING

1 SYSTEM IS USED, TO THE EXTENT THE INFORMATION IS MAINTAINED BY THE  
2 DEPARTMENT;

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

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

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

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

13 8. THE TOTAL AMOUNT OF REVENUE REALIZED BY SUCH LOCAL AUTHORITY FROM  
14 SUCH ADJUDICATIONS;

15 9. EXPENSES INCURRED BY SUCH LOCAL AUTHORITY IN CONNECTION WITH THE  
16 PROGRAM; AND

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

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

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

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

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