

5238

2015-2016 Regular Sessions

I N S E N A T E

May 8, 2015

Introduced by Sen. MURPHY -- 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 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
21 PURSUANT TO THIS SECTION SHALL BE DISMISSED SOLELY BECAUSE A PHOTOGRAPH
22 OR PHOTOGRAPHS ALLOW FOR THE IDENTIFICATION OF THE CONTENTS OF A VEHI-

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

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CLE, PROVIDED THAT SUCH LOCAL AUTHORITY HAS MADE A REASONABLE EFFORT TO COMPLY WITH THE PROVISIONS OF THIS PARAGRAPH.

(B) WITHIN THE JURISDICTION OF ANY SUCH LOCAL AUTHORITY WHICH HAS ADOPTED A LOCAL LAW, ORDINANCE OR RESOLUTION 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 SECTION ELEVEN HUNDRED SEVENTY OF THIS ARTICLE, AND SUCH VIOLATION IS EVIDENCED BY INFORMATION OBTAINED FROM A RAILROAD GRADE CROSSING PHOTO 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 VIOLATION OF SECTION ELEVEN HUNDRED SEVENTY OF THIS ARTICLE.

(C) FOR PURPOSES OF THIS SECTION, "OWNER" SHALL HAVE THE MEANING PROVIDED IN ARTICLE TWO-B OF THIS CHAPTER. FOR PURPOSES OF THIS SECTION, "RAILROAD GRADE CROSSING PHOTO VIOLATION-MONITORING SYSTEM" SHALL MEAN A VEHICLE SENSOR INSTALLED TO WORK IN CONJUNCTION WITH A RAILROAD SIGN OR SIGNAL 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 SECTION ELEVEN HUNDRED SEVENTY OF THIS ARTICLE.

(D) A CERTIFICATE, SWORN TO OR AFFIRMED BY A TECHNICIAN EMPLOYED BY THE LOCAL AUTHORITY IN WHICH THE CHARGED VIOLATION OCCURRED, OR A FACSIMILE THEREOF, BASED UPON INSPECTION OF PHOTOGRAPHS, MICROPHOTOGRAPHS, VIDEOTAPE OR OTHER RECORDED IMAGES PRODUCED BY A RAILROAD GRADE CROSSING PHOTO 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, ORDINANCE OR RESOLUTION ADOPTED PURSUANT TO THIS SECTION.

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

(F) AN IMPOSITION OF LIABILITY UNDER A LOCAL LAW, ORDINANCE OR RESOLUTION 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 SECTION ELEVEN HUNDRED SEVENTY OF THIS ARTICLE 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 SECTION ELEVEN HUNDRED SEVENTY OF THIS ARTICLE PURSUANT TO THIS SECTION, THE REGISTRATION NUMBER OF THE VEHICLE INVOLVED IN SUCH VIOLATION, THE LOCATION

1 WHERE SUCH VIOLATION TOOK PLACE, THE DATE AND TIME OF SUCH VIOLATION AND
2 THE IDENTIFICATION NUMBER OF THE CAMERA WHICH RECORDED THE VIOLATION OR
3 OTHER DOCUMENT LOCATOR NUMBER.

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

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

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

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

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

50 2. (I) IN SUCH LOCAL AUTHORITY WHICH HAS AUTHORIZED THE ADJUDICATION
51 OF LIABILITY IMPOSED UPON OWNERS BY THIS SECTION BY A PARKING VIOLATIONS
52 BUREAU, AN OWNER WHO IS A LESSOR OF A VEHICLE TO WHICH A NOTICE OF
53 LIABILITY WAS ISSUED PURSUANT TO SUBDIVISION (G) OF THIS SECTION SHALL
54 NOT BE LIABLE FOR THE VIOLATION OF SECTION ELEVEN HUNDRED SEVENTY OF
55 THIS ARTICLE, PROVIDED THAT:

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

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

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

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

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

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

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

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

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

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

51 3. THE AGGREGATE NUMBER, TYPE AND SEVERITY OF ACCIDENTS REPORTED AT
52 INTERSECTIONS WHERE A RAILROAD GRADE CROSSING PHOTO VIOLATION-MONITORING
53 SYSTEM IS USED, TO THE EXTENT THE INFORMATION IS MAINTAINED BY THE
54 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 (o) to read as follows:

22 (O) 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.