

# STATE OF NEW YORK

2303

2017-2018 Regular Sessions

## IN SENATE

January 12, 2017

Introduced by Sens. MURPHY, CARLUCCI, LARKIN -- 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 1170-a to read as follows:

3 § 1170-a. Owner liability for failure of operator to obey signal indi-  
4 cating approach of train. (a) 1. Notwithstanding any other provision of  
5 law, any local authority is hereby authorized and empowered to adopt and  
6 amend a local law, ordinance or resolution establishing a demonstration  
7 program imposing monetary liability on the owner of a vehicle for fail-  
8 ure of an operator thereof to comply with section eleven hundred seventy  
9 of this article. Such demonstration program shall empower a local  
10 authority to install and operate railroad grade crossing photo viola-  
11 tion-monitoring devices at any railroad sign or signal.

12 2. Such demonstration program shall utilize necessary technologies to  
13 ensure, to the extent practicable, that photographs produced by such  
14 railroad grade crossing photo violation-monitoring systems shall not  
15 include images that identify the driver, the passengers or the contents  
16 of the vehicle. Provided, however, that no notice of liability issued  
17 pursuant to this section shall be dismissed solely because a photograph  
18 or photographs allow for the identification of the contents of a vehi-  
19 cle, provided that such local authority has made a reasonable effort to  
20 comply with the provisions of this paragraph.

21 (b) Within the jurisdiction of any such local authority which has  
22 adopted a local law, ordinance or resolution pursuant to subdivision (a)

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

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1 of this section, the owner of a vehicle shall be liable for a penalty  
2 imposed pursuant to this section if such vehicle was used or operated  
3 with the permission of the owner, express or implied, in violation of  
4 section eleven hundred seventy of this article, and such violation is  
5 evidenced by information obtained from a railroad grade crossing photo  
6 violation-monitoring system; provided, however, that no owner of a vehi-  
7 cle shall be liable for a penalty imposed pursuant to this section where  
8 the operator of such vehicle has been convicted of the underlying  
9 violation of section eleven hundred seventy of this article.

10 (c) For purposes of this section, "owner" shall have the meaning  
11 provided in article two-B of this chapter. For purposes of this section,  
12 "railroad grade crossing photo violation-monitoring system" shall mean a  
13 vehicle sensor installed to work in conjunction with a railroad sign or  
14 signal which automatically produces two or more photographs, two or more  
15 microphotographs, a videotape or other recorded images of each vehicle  
16 at the time it is used or operated in violation of section eleven  
17 hundred seventy of this article.

18 (d) A certificate, sworn to or affirmed by a technician employed by  
19 the local authority in which the charged violation occurred, or a  
20 facsimile thereof, based upon inspection of photographs, microphoto-  
21 graphs, videotape or other recorded images produced by a railroad grade  
22 crossing photo violation-monitoring system, shall be prima facie  
23 evidence of the facts contained therein. Any photographs, microphoto-  
24 graphs, videotape or other recorded images evidencing such a violation  
25 shall be available for inspection in any proceeding to adjudicate the  
26 liability for such violation pursuant to a local law, ordinance or  
27 resolution adopted pursuant to this section.

28 (e) An owner liable for a violation of section eleven hundred seventy  
29 of this article pursuant to a local law, ordinance or resolution adopted  
30 pursuant to this section shall be liable for monetary penalties in  
31 accordance with a schedule of fines and penalties to be established in  
32 such local law, ordinance or resolution. The liability of the owner  
33 pursuant to this section shall not exceed one hundred dollars for each  
34 violation; provided, however, that an adjudicating authority may provide  
35 for an additional penalty of not in excess of twenty-five dollars for  
36 each violation for the failure to respond to a notice of liability with-  
37 in the prescribed period of time.

38 (f) An imposition of liability under a local law, ordinance or resol-  
39 ution adopted pursuant to this section shall not be deemed a conviction  
40 as an operator and shall not be made part of the operating record of the  
41 person upon whom such liability is imposed nor shall it be used for  
42 insurance purposes in the provision of motor vehicle insurance coverage.

43 (g) 1. A notice of liability shall be sent by first class mail to each  
44 person alleged to be liable as an owner for a violation of section elev-  
45 en hundred seventy of this article pursuant to this section. Personal  
46 delivery on the owner shall not be required. A manual or automatic  
47 record of mailing prepared in the ordinary course of business shall be  
48 prima facie evidence of the facts contained therein.

49 2. A notice of liability shall contain the name and address of the  
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, the regis-  
52 tration number of the vehicle involved in such violation, the location  
53 where such violation took place, the date and time of such violation and  
54 the identification number of the camera which recorded the violation or  
55 other document locator number.

1     3. The notice of liability shall contain information advising the  
2 person charged of the manner and the time in which he or she may contest  
3 the liability alleged in the notice. Such notice of liability shall also  
4 contain a warning to advise the person charged that failure to contest  
5 in the manner and time provided shall be deemed an admission of liability  
6 and that a default judgment may be entered thereon.

7     4. The notice of liability shall be prepared and mailed by the local  
8 authority, or by any other entity authorized by such local authority to  
9 prepare and mail such notification of violation.

10    (h) Adjudication of the liability imposed upon owners by this section  
11 shall be by the court having jurisdiction over traffic infractions,  
12 except that if such local authority has established an administrative  
13 tribunal to hear and determine complaints of traffic infractions consti-  
14 tuting parking, standing or stopping violations such local authority  
15 may, by local law, authorize such adjudication by such tribunal.

16    (i) If an owner receives a notice of liability pursuant to this  
17 section for any time period during which the vehicle was reported to a  
18 law enforcement agency as having been stolen, it shall be a valid  
19 defense to an allegation of liability for a violation of section eleven  
20 hundred seventy of this article pursuant to this section that the vehi-  
21 cle had been reported to the police as stolen prior to the time the  
22 violation occurred and had not been recovered by such time. For purposes  
23 of asserting the defense provided by this subdivision it shall be suffi-  
24 cient that a certified copy of a police report on the stolen vehicle be  
25 sent by first class mail to the court having jurisdiction or parking  
26 violations bureau.

27    (j) 1. In such local authority where the adjudication of liability  
28 imposed upon owners pursuant to this section is by a court having juris-  
29 isdiction, an owner who is a lessor of a vehicle to which a notice of  
30 liability was issued pursuant to subdivision (g) of this section shall  
31 not be liable for the violation of section eleven hundred seventy of  
32 this article, provided that he or she sends to the court having juris-  
33 isdiction a copy of the rental, lease or other such contract document  
34 covering such vehicle on the date of the violation, with the name and  
35 address of the lessee clearly legible, within thirty-seven days after  
36 receiving notice from the court of the date and time of such violation,  
37 together with the other information contained in the original notice of  
38 liability. Failure to send such information within such thirty-seven  
39 day time period shall render the owner liable for the penalty prescribed  
40 by this section. Where the lessor complies with the provisions of this  
41 paragraph, the lessee of such vehicle on the date of such violation  
42 shall be deemed to be the owner of such vehicle for purposes of this  
43 section, shall be subject to liability for the violation of section  
44 eleven hundred seventy of this article pursuant to this section and  
45 shall be sent a notice of liability pursuant to subdivision (g) of this  
46 section.

47    2. (I) In such local authority which has authorized the adjudication  
48 of liability imposed upon owners by this section by a parking violations  
49 bureau, an owner who is a lessor of a vehicle to which a notice of  
50 liability was issued pursuant to subdivision (g) of this section shall  
51 not be liable for the violation of section eleven hundred seventy of  
52 this article, provided that:

53    (A) prior to the violation, the lessor has filed with the bureau in  
54 accordance with the provisions of section two hundred thirty-nine of  
55 this chapter; and

1 (B) within thirty-seven days after receiving notice from the bureau of  
2 the date and time of a liability, together with the other information  
3 contained in the original notice of liability, the lessor submits to the  
4 bureau the correct name and address of the lessee of the vehicle identi-  
5 fied in the notice of liability at the time of such violation, together  
6 with such other additional information contained in the rental, lease or  
7 other contract document, as may be reasonably required by the bureau  
8 pursuant to regulations that may be promulgated for such purpose.

9 (II) Failure to comply with clause (B) of subparagraph (I) of this  
10 paragraph shall render the owner liable for the penalty prescribed in  
11 this section.

12 (III) Where the lessor complies with the provisions of this paragraph,  
13 the lessee of such vehicle on the date of such violation shall be deemed  
14 to be the owner of such vehicle for purposes of this section, shall be  
15 subject to liability for such violation pursuant to this section and  
16 shall be sent a notice of liability pursuant to subdivision (q) of this  
17 section.

18 (k) 1. If the owner liable for a violation of section eleven hundred  
19 seventy of this article pursuant to this section was not the operator of  
20 the vehicle at the time of the violation, the owner may maintain an  
21 action for indemnification against the operator.

22 2. Notwithstanding any other provision of this section, no owner of a  
23 vehicle shall be subject to a monetary fine imposed pursuant to this  
24 section if the operator of such vehicle was operating such vehicle with-  
25 out the consent of the owner at the time such operator failed to obey a  
26 railroad sign or signal indicating the approach of a train. For  
27 purposes of this subdivision there shall be a presumption that the oper-  
28 ator of such vehicle was operating such vehicle with the consent of the  
29 owner at the time such operator failed to obey a railroad sign or signal  
30 indicating the approach of a train.

31 (l) Nothing in this section shall be construed to limit the liability  
32 of an operator of a vehicle for any violation of section eleven hundred  
33 seventy of this article.

34 (m) In any such local authority which adopts a demonstration program  
35 pursuant to subdivision (a) of this section, such local authority shall  
36 submit an annual report on the results of the use of a railroad grade  
37 crossing photo violation-monitoring system to the governor, the tempo-  
38 rary president of the senate and the speaker of the assembly on or  
39 before June first, two thousand nineteen and on the same date in each  
40 succeeding year in which the demonstration program is operable. Such  
41 report shall include, but not be limited to:

42 1. a description of the locations where railroad grade crossing photo  
43 violation-monitoring systems were used;

44 2. the aggregate number, type and severity of accidents reported at  
45 intersections where a railroad grade crossing photo violation-monitoring  
46 system is used for the year preceding the installation of such system,  
47 to the extent the information is maintained by the department;

48 3. the aggregate number, type and severity of accidents reported at  
49 intersections where a railroad grade crossing photo violation-monitoring  
50 system is used, to the extent the information is maintained by the  
51 department;

52 4. the number of violations recorded at each intersection where a  
53 railroad grade crossing photo violation-monitoring system is used and in  
54 the aggregate on a daily, weekly and monthly basis;

55 5. the total number of notices of liability issued for violations  
56 recorded by such systems;

1 6. the number of fines and total amount of fines paid after first  
2 notice of liability issued for violations recorded by such systems;

3 7. the number of violations adjudicated and results of such adjudi-  
4 cations including breakdowns of dispositions made for violations  
5 recorded by such systems;

6 8. the total amount of revenue realized by such local authority from  
7 such adjudications;

8 9. expenses incurred by such local authority in connection with the  
9 program; and

10 10. quality of the adjudication process and its results.

11 (n) It shall be a defense to any prosecution for a violation of  
12 section eleven hundred seventy of this article pursuant to a local law  
13 or ordinance adopted pursuant to this section that the railroad signal  
14 indications were malfunctioning at the time of the alleged violation.

15 § 2. Subdivision 2 of section 87 of the public officers law is amended  
16 by adding a new paragraph (p) to read as follows:

17 (p) are photographs, microphotographs, videotape or other recorded  
18 images prepared under the authority of section eleven hundred seventy-a  
19 of the vehicle and traffic law.

20 § 3. This act shall take effect on the thirtieth day after it shall  
21 have become a law.