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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 -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of 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 political subdivisions to establish demonstration programs, implementing railroad grade crossing monitoring systems by means of 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:

1 Section 1. Section 135-a of the vehicle and traffic law, as added by
2 chapter 501 of the laws of 2016, is amended to read as follows:

3 § 135-a. Railroad grade crossing. A location where [~~a public highway~~
4 ~~or private road, including associated sidewalks, crosses one or more~~]
5 railroad tracks [~~at grade~~] intersect a public or private highway, road-
6 way or sidewalk.

7 § 2. The vehicle and traffic law is amended by adding a new section
8 1170-a to read as follows:

9 § 1170-a. Owner liability for failure of operator to obey signal
10 indicating approach of train. (a) 1. Notwithstanding any other
11 provision of law, any political subdivision is hereby authorized and
12 empowered to adopt and amend a local law, ordinance or resolution estab-
13 lishing a demonstration program imposing monetary liability on the owner
14 of a vehicle for failure of an operator thereof to comply with section
15 eleven hundred seventy of this article. Such demonstration program shall
16 empower a political subdivision to install and operate railroad grade
17 crossing photo violation-monitoring devices at any railroad sign or

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

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1 signal within its jurisdiction. The cost of such photo violation-mon-
2 itoring devices may be borne by the political subdivision, a commuter
3 railroad operating within the political subdivision, or a combination of
4 both such political subdivision and commuter railroad pursuant to a
5 memorandum of understanding.

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

15 (b) Within the jurisdiction of any such political subdivision which
16 has adopted a local law, ordinance or resolution pursuant to subdivision
17 (a) of this section, the owner of a vehicle shall be liable for a penal-
18 ty imposed pursuant to this section if such vehicle was used or operated
19 with the permission of the owner, express or implied, in violation of
20 section eleven hundred seventy of this article, and such violation is
21 evidenced by information obtained from a railroad grade crossing photo
22 violation-monitoring system; provided, however, that no owner of a vehi-
23 cle shall be liable for a penalty imposed pursuant to this section where
24 the operator of such vehicle has been convicted of the underlying
25 violation of section eleven hundred seventy of this article.

26 (c) For purposes of this section, the following terms shall have the
27 following meanings:

28 1. "Owner" shall have the meaning provided in article two-B of this
29 chapter.

30 2. "Railroad grade crossing photo violation-monitoring system" shall
31 mean a vehicle sensor installed to work in conjunction with a railroad
32 sign or signal which automatically produces two or more photographs, two
33 or more microphotographs, a videotape or other recorded images of each
34 vehicle at the time it is used or operated in violation of section elev-
35 en hundred seventy of this article.

36 3. "Political subdivision" shall mean a county, city, town or village
37 located within the metropolitan commuter transportation district, as
38 defined in section twelve hundred sixty-two of the public authorities
39 law.

40 4. "Commuter railroad" shall mean a railroad owned and operated by the
41 metropolitan transportation authority and located within the metropol-
42 itan commuter transportation district, as defined in section twelve
43 hundred sixty-two of the public authorities law.

44 (d) A certificate, sworn to or affirmed by a technician employed by
45 the political subdivision in which the charged violation occurred, or a
46 facsimile thereof, based upon inspection of photographs, microphoto-
47 graphs, videotape or other recorded images produced by a railroad grade
48 crossing photo violation-monitoring system, shall be prima facie
49 evidence of the facts contained therein. Any photographs, microphoto-
50 graphs, videotape or other recorded images evidencing such a violation
51 shall be available for inspection in any proceeding to adjudicate the
52 liability for such violation pursuant to a local law, ordinance or
53 resolution adopted pursuant to this section.

54 (e) An owner liable for a violation of section eleven hundred seventy
55 of this article pursuant to a local law, ordinance or resolution adopted
56 pursuant to this section shall be liable for monetary penalties in

1 accordance with a schedule of fines and penalties to be established in
2 such local law, ordinance or resolution. The liability of the owner
3 pursuant to this section shall not exceed one hundred dollars for each
4 violation; provided, however, that an adjudicating authority may provide
5 for an additional penalty of not in excess of twenty-five dollars for
6 each violation for the failure to respond to a notice of liability with-
7 in the prescribed period of time.

8 (f) An imposition of liability under a local law, ordinance or resolu-
9 tion adopted pursuant to this section shall not be deemed a conviction
10 as an operator and shall not be made part of the operating record of the
11 person upon whom such liability is imposed nor shall it be used for
12 insurance purposes in the provision of motor vehicle insurance coverage.

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

19 2. A notice of liability shall contain the name and address of the
20 person alleged to be liable as an owner for a violation of section elev-
21 en hundred seventy of this article pursuant to this section, the regis-
22 tration number of the vehicle involved in such violation, the location
23 where such violation took place, the date and time of such violation and
24 the identification number of the camera which recorded the violation or
25 other document locator number.

26 3. The notice of liability shall contain information advising the
27 person charged of the manner and the time in which he or she may contest
28 the liability alleged in the notice. Such notice of liability shall also
29 contain a warning to advise the person charged that failure to contest
30 in the manner and time provided shall be deemed an admission of liabil-
31 ity and that a default judgment may be entered thereon.

32 4. The notice of liability shall be prepared and mailed by the poli-
33 tical subdivision, or by any other entity authorized by such political
34 subdivision to prepare and mail such notification of violation.

35 (h) Adjudication of the liability imposed upon owners by this section
36 shall be by the court having jurisdiction over traffic infractions,
37 except that if such political subdivision has established an administra-
38 tive tribunal to hear and determine complaints of traffic infractions
39 constituting parking, standing or stopping violations such political
40 subdivision may, by local law, authorize such adjudication by such
41 tribunal.

42 (i) If an owner receives a notice of liability pursuant to this
43 section for any time period during which the vehicle was reported to a
44 law enforcement agency as having been stolen, it shall be a valid
45 defense to an allegation of liability for a violation of section eleven
46 hundred seventy of this article pursuant to this section that the vehi-
47 cle had been reported to the police as stolen prior to the time the
48 violation occurred and had not been recovered by such time. For purposes
49 of asserting the defense provided by this subdivision it shall be suffi-
50 cient that a certified copy of a police report on the stolen vehicle be
51 sent by first class mail to the court having jurisdiction or parking
52 violations bureau.

53 (j) 1. In such political subdivision where the adjudication of liabil-
54 ity imposed upon owners pursuant to this section is by a court having
55 jurisdiction, an owner who is a lessor of a vehicle to which a notice of
56 liability was issued pursuant to subdivision (g) of this section shall

1 not be liable for the violation of section eleven hundred seventy of
2 this article, provided that he or she sends to the court having juris-
3 isdiction a copy of the rental, lease or other such contract document
4 covering such vehicle on the date of the violation, with the name and
5 address of the lessee clearly legible, within thirty-seven days after
6 receiving notice from the court of the date and time of such violation,
7 together with the other information contained in the original notice of
8 liability. Failure to send such information within such thirty-seven
9 day time period shall render the owner liable for the penalty prescribed
10 by this section. Where the lessor complies with the provisions of this
11 paragraph, the lessee of such vehicle on the date of such violation
12 shall be deemed to be the owner of such vehicle for purposes of this
13 section, shall be subject to liability for the violation of section
14 eleven hundred seventy of this article pursuant to this section and
15 shall be sent a notice of liability pursuant to subdivision (g) of this
16 section.

17 2. (I) In such political subdivision which has authorized the adjudi-
18 cation of liability imposed upon owners by this section by a parking
19 violations bureau, an owner who is a lessor of a vehicle to which a
20 notice of liability was issued pursuant to subdivision (g) of this
21 section shall not be liable for the violation of section eleven hundred
22 seventy of this article, provided that:

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

26 (B) within thirty-seven days after receiving notice from the bureau of
27 the date and time of a liability, together with the other information
28 contained in the original notice of liability, the lessor submits to the
29 bureau the correct name and address of the lessee of the vehicle identi-
30 fied in the notice of liability at the time of such violation, together
31 with such other additional information contained in the rental, lease or
32 other contract document, as may be reasonably required by the bureau
33 pursuant to regulations that may be promulgated for such purpose.

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

37 (III) Where the lessor complies with the provisions of this paragraph,
38 the lessee of such vehicle on the date of such violation shall be deemed
39 to be the owner of such vehicle for purposes of this section, shall be
40 subject to liability for such violation pursuant to this section and
41 shall be sent a notice of liability pursuant to subdivision (g) of this
42 section.

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

47 2. Notwithstanding any other provision of this section, no owner of a
48 vehicle shall be subject to a monetary fine imposed pursuant to this
49 section if the operator of such vehicle was operating such vehicle with-
50 out the consent of the owner at the time such operator failed to obey a
51 railroad sign or signal indicating the approach of a train. For
52 purposes of this subdivision there shall be a presumption that the oper-
53 ator of such vehicle was operating such vehicle with the consent of the
54 owner at the time such operator failed to obey a railroad sign or signal
55 indicating the approach of a train.

1 (1) Nothing in this section shall be construed to limit the liability
2 of an operator of a vehicle for any violation of section eleven hundred
3 seventy of this article.

4 (m) In any such political subdivision which adopts a demonstration
5 program pursuant to subdivision (a) of this section, such political
6 subdivision shall submit an annual report on the results of the use of a
7 railroad grade crossing photo violation-monitoring system to the gover-
8 nor, the temporary president of the senate and the speaker of the assem-
9 bly on or before June first, two thousand eighteen and on the same date
10 in each succeeding year in which the demonstration program is operable.
11 Such report shall include, but not be limited to:

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

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

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

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

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

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

29 7. the number of violations adjudicated and results of such adjudi-
30 cations including breakdowns of dispositions made for violations
31 recorded by such systems;

32 8. the total amount of revenue realized by such political subdivision
33 from such adjudications;

34 9. expenses incurred by such political subdivision in connection with
35 the program; and

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

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

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

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

46 § 4. This act shall take effect on the thirtieth day after it shall
47 have become a law, and shall expire and be deemed repealed 5 years after
48 such effective date.