

# STATE OF NEW YORK

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2303--C

2017-2018 Regular Sessions

## IN SENATE

January 12, 2017

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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 -- recommitted to the Committee on Transportation in accordance with Senate Rule 6, sec. 8 -- 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 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

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

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1 eleven hundred seventy of this article. Such demonstration program shall  
2 empower a political subdivision to install and operate railroad grade  
3 crossing photo violation-monitoring devices at any railroad sign or  
4 signal within its jurisdiction. The cost of such photo violation-moni-  
5 toring devices may be borne by the political subdivision, a commuter  
6 railroad operating within the political subdivision, or a combination of  
7 both such political subdivision and commuter railroad pursuant to a  
8 memorandum of understanding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) 1. In such political subdivision where the adjudication of liability imposed upon owners pursuant to this section is by a court having jurisdiction, an owner who is a lessor of a vehicle to which a notice of 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 he or she sends to the court having jurisdiction a copy of the rental, lease or other such contract document covering such vehicle on the date of the violation, with the name and address of the lessee clearly legible, within thirty-seven days after receiving notice from the court of the date and time of such violation, together with the other information contained in the original notice of liability. Failure to send such information within such thirty-seven day time period shall render the owner liable for the penalty prescribed by this section. 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 the violation of section eleven hundred seventy of this article pursuant to this section and shall be sent a notice of liability pursuant to subdivision (g) of this section.

2. (I) In such political subdivision which has authorized the adjudication of liability imposed upon owners by this section by a parking violations bureau, an owner who is a lessor of a vehicle to which a notice of 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 oper-

1 ator of such vehicle was operating such vehicle with the consent of the  
2 owner at the time such operator failed to obey a railroad sign or signal  
3 indicating the approach of a train.

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

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

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

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

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

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

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

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

32 7. the number of violations adjudicated and results of such adjudi-  
33 cations including breakdowns of dispositions made for violations  
34 recorded by such systems;

35 8. the total amount of revenue realized by such political subdivision  
36 from such adjudications;

37 9. expenses incurred by such political subdivision in connection with  
38 the program; and

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

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

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

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

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