STATE OF NEW YORK

8824

IN SENATE

May 23, 2018

Introduced by Sen. FELDER -- read twice and ordered printed, and when printed to be committed to the Committee on Cities

AN ACT to amend the public authorities law, the vehicle and traffic law and the public officers law, in relation to establishing a temporary high-occupancy vehicle program on the Williamsburg bridge by means of mobile or stationary photo devices; and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1268 of the public authorities law is amended by adding a new subdivision 4 to read as follows:

4. The authority and the New York city transit authority or any of its subsidiary corporations shall consult with and assist the city of New York in implementing a temporary high-occupancy vehicle (HOV) program on the Williamsburg bridge pursuant to section eleven hundred eleven-f of the vehicle and traffic law.

§ 2. The vehicle and traffic law is amended by adding a new section 235-a to read as follows:

§ 235-a. Jurisdiction; Williamsburg bridge temporary high-occupancy vehicle program. Notwithstanding any inconsistent provisions of any general, special or local law or administrative code to the contrary, in any city of a million or more which heretofore or hereafter is authorized to establish a parking violations bureau having jurisdiction to hear and determine complaints of traffic infractions constituting parking, standing or stopping violations in accordance with section two hundred thirty-six of this article, such tribunal shall be authorized to adjudicate the liability of owners for violations of subdivision (f) of section eleven hundred ten and section eleven hundred eleven-f of this chapter for violations of the temporary high-occupancy vehicle (HOV) program as defined in such section eleven hundred eleven-f, and such tribunal and the rules and regulations pertaining thereto shall be constituted in substantial conformance with the following sections.

§ 3. Section 236 of the vehicle and traffic law is amended by adding a new subdivision 1-a to read as follows:

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

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1-a. Creation. In any city of a million or more as hereinbefore or hereafter authorized such tribunal when created shall be known as the parking violations bureau and shall have jurisdiction of traffic infractions which constitute a parking violation and shall adjudicate liability of owners in accordance with subdivision (f) of section eleven hundred ten and section eleven hundred eleven-f of this chapter for violations of the temporary high-occupancy vehicle (HOV) program as defined in such section eleven hundred eleven-f. For the purposes of this article, a parking violation is the violation of any law, rule or regulation providing for or regulating the parking, stopping or standing of a vehicle. In addition for purposes of this article, "commissioner" shall mean and include the commissioner of traffic of the city or an official possessing authority as such a commissioner.

§ 4. Section 237 of the vehicle and traffic law is amended by adding a new subdivision 16 to read as follows:

16. To adjudicate the liability of owners for violations of subdivision (f) of section eleven hundred ten and section eleven hundred eleven-f of this chapter.

§ 5. Subdivision 1 of section 239 of the vehicle and traffic law is amended by adding a new paragraph f-1 to read as follows:

f-1. "Notice of violation" means a notice of violation as defined in subdivision nine of section two hundred thirty-seven of this article and shall not be deemed to include a notice of liability issued pursuant to authorization set forth in subdivision (f) of section eleven hundred ten and section eleven hundred eleven-f of this chapter.

§ 6. Section 240 of the vehicle and traffic law is amended by adding three new subdivisions 1-b, 1-c and 2-a to read as follows:

1-b. Notice of hearing. Whenever a person alleged to be liable in accordance with the provisions of subdivision (f) of section eleven hundred ten and section eleven hundred eleven-f of this chapter enters a plea of not guilty or contests such an allegation, the bureau shall advise such person personally by such form of first class mail as the director may direct of the date on which he or she must appear to answer the charge at a hearing. The form and content of such notice of hearing shall be prescribed by the director, and shall contain a warning to advise the person so pleading or contesting that failure to appear on the date designated, or on any subsequent adjourned date, shall be deemed an admission of liability, and that a default judgment may be entered thereon.

1-c. Fines and penalties. Whenever a plea of not guilty has been entered, or the bureau has been notified that an allegation of liability in accordance with subdivision (f) of section eleven hundred ten and section eleven hundred eleven-f of this chapter is being contested, by a person in a timely fashion and a hearing on the merits has been demanded, but has not yet been held, the bureau shall not issue any notice of fine or penalty to that person prior to the date of the hearing.

2-a. Conduct of hearings. a. Every hearing for an adjudication of an allegation of liability in accordance with subdivision (f) of section eleven hundred ten and section eleven hundred eleven-f of this chapter shall be held before a hearing examiner in accordance with rules and regulations promulgated by the bureau.

b. No charge may be established except upon proof by substantial evidence.

c. The hearing examiner shall not be bound by the rules of evidence in the conduct of the hearing, except rules relating to privileged communications.

d. The hearing examiner shall at the request of the person charged on a showing of good cause and need therefor, or in his or her own discretion, issue a subpoena to compel the appearance at a hearing of the officer who served the notice of violation or of other persons to give testimony, and may issue a subpoena duces tecum to compel the production for examination or introduction into evidence, of any book, paper or other thing relevant to the charges.

e. In the case of a refusal to obey a subpoena, the bureau may make application to the Supreme Court pursuant to section twenty-three hundred eight of the civil practice law and rules, for an order requiring such appearance, testimony or production of evidence.

f. The hearing examiner shall not examine the prior violation record of a person charged before making a determination.

g. A record shall be made of a hearing on a plea of not guilty or of a hearing at which liability in accordance with subdivision (f) of section eleven hundred ten and section eleven hundred eleven-f of this chapter is contested. Recording devices may be used for the making of the record.

§ 7. Section 241 of the vehicle and traffic law is amended by adding two new subdivisions 1-a and 2-a to read as follows:

1-a. The hearing examiner shall make a determination on the charges, either sustaining or dismissing them. Where the hearing examiner determines that the charges have been sustained he or she may examine either the prior parking violations record or the record of liabilities incurred in accordance with enforcement of subdivision (f) of section eleven hundred ten and section eleven hundred eleven-f of this chapter of the person charged prior to rendering a final determination. Final determinations sustaining or dismissing charges shall be entered on a final determination roll maintained by the bureau together with records showing payment and nonpayment of penalties.

2-a. Where an operator or owner fails to enter a plea to or contest an allegation of liability in accordance with subdivision (f) of section eleven hundred ten and section eleven hundred eleven-f of this chapter or fails to appear on a designated hearing date or subsequent adjourned date or fails after a hearing to comply with the determination of a hearing examiner, as prescribed by this article or by rule or regulation of the bureau, such failure to plead, appear or comply shall be deemed, for all purposes, an admission of liability and shall be grounds for rendering and entering a default judgment in an amount provided by the rules and regulations of the bureau. However, after the expiration of the original date prescribed for entering a plea and before a default judgment may be rendered, in such case the bureau shall pursuant to the applicable provisions of law notify such operator or owner, by such form of first class mail as the commission may direct: (1) of the violation charged or liability in accordance with subdivision (f) of section eleven hundred ten and section eleven hundred eleven-f of this chapter alleged, (2) of the impending default judgment, (3) that such judgment will be entered in the Civil Court of the city in which the bureau has been established, or other court of civil jurisdiction or any other place provided for the entry of civil judgments within the state of New York, and (4) that a default may be avoided by entering a plea or contesting an allegation of liability in accordance with section eleven hundred eleven-f of this chapter or making an appearance within thirty

days of the sending of such notice. Pleas entered within that period shall be in the manner prescribed in the notice and not subject to additional penalty or fee. Such notice of impending default judgment shall not be required prior to the rendering and entry thereof in the case of operators or owners who are non-residents of the state of New York. In no case shall a default judgment be rendered or, where required, a notice of impending default judgment be sent, more than two years after the expiration of the time prescribed for entering a plea. When a person has demanded a hearing, no fine or penalty shall be imposed for any reason prior to the holding of the hearing. If the hearing examiner shall make a determination on the charges, sustaining them, he or she shall impose no greater penalty or fine than those upon which the person was originally charged.

§ 8. Subdivision 5-a of section 401 of the vehicle and traffic law is amended by adding a new paragraph a-1 to read as follows:

a-1. If at the time of application for a registration or renewal thereof there is a certification from a court or administrative tribunal of appropriate jurisdiction that the registrant or his or her representative failed to appear on the return date or any subsequent adjourned date or failed to comply with the rules and regulations of an administrative tribunal following entry of a final decision in response to a total of three or more summonses or other process in the aggregate, issued within an eighteen-month period, charging that the registrant was liable in accordance with subdivision (f) of section eleven hundred ten and section eleven hundred eleven-f of this chapter for a violation of the temporary high-occupancy vehicle (HOV) program as defined in such section eleven hundred eleven-f, the commissioner or his or her agent shall deny the registration or renewal application until the applicant provides proof from the court or administrative tribunal wherein the charges are pending that an appearance or answer has been made or in the case of an administrative tribunal that he or she has complied with the rules and regulations of said tribunal following entry of a final decision. Where an application is denied pursuant to this section, the commissioner may, in his or her discretion, deny a registration or renewal application to any other person for the same vehicle and may deny a registration or renewal application for any other motor vehicle registered in the name of the applicant where the commissioner has determined that such registrant's intent has been to evade the purposes of this subdivision and where the commissioner has reasonable grounds to believe that such registration or renewal will have the effect defeating the purposes of this subdivision. Such denial shall only remain in effect as long as the summonses remain unanswered, or in the case of an administrative tribunal, the registrant fails to comply with the rules and regulations following entry of a final decision.

§ 9. Section 1110 of the vehicle and traffic law is amended by adding a new subdivision (f) to read as follows:

(f) Every person shall obey the instructions of any official traffic-control device placed to delineate high-occupancy vehicle lane restrictions pursuant to section eleven hundred eleven-f of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this title.

§ 10. The vehicle and traffic law is amended by adding a new section 1111-f to read as follows:

§ 1111-f. Owner liability for failure of operator to comply with temporary high-occupancy vehicle program restrictions. (a) 1. Notwith-

standing any other provision of law, the city of New York in consultation with the metropolitan transportation authority is hereby authorized and empowered to establish a temporary high-occupancy vehicle (HOV) program on the Williamsburg bridge. Such program will impose monetary liability on the owner of a vehicle for failure of an operator thereof to comply with HOV restrictions in such city in accordance with the provisions of this section. The New York city department of transportation, for purposes of the implementation of such program, shall operate HOV photo devices only within designated HOV areas on the Williamsburg bridge in such city. Such HOV photo devices shall be stationary and shall be activated at locations determined by such department.

2. Any image produced by an HOV photo device shall not be used for any purpose other than as specified in this section in the absence of a court order requiring such image to be produced.

3. The city of New York shall adopt and enforce measures to protect the privacy of drivers, passengers, pedestrians and cyclists whose identity and identifying information may be captured by an HOV photo device, provided, however, that no notice of liability issued pursuant to this section shall be dismissed solely because an image produced by an HOV photo device allows for the identification of the driver, the passengers, or the contents of a vehicle. Such protective measures shall include:

(i) a prohibition on the use or dissemination of vehicles' license plate information and other information and images captured by HOV photo devices except: (A) as required to establish liability under this section or collect payment of penalties; (B) as required by court order; (C) as required pursuant to a search warrant issued in accordance with the criminal procedure law or a subpoena; or (D) as otherwise required by law;

(ii) the installation of signage in advance of entry points to designated HOV areas stating that HOV photo devices are used to enforce HOV restrictions; and

(iii) oversight procedures to ensure compliance with the aforementioned privacy protection measures.

4. Within the city of New York, such HOV photo devices used in accordance with the temporary HOV program shall only be operated within designated HOV areas on the Williamsburg bridge during periods to be determined by the New York city department of transportation in consultation with the metropolitan transportation authority in order to facilitate traffic management. Determination of such periods shall be made based on factors that include, but are not limited to, empirical traffic analyses conducted by such department, input from the public, and guidance from appropriate government entities regarding mitigation strategies.

(b) If the city of New York has established a temporary HOV program 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 any HOV restrictions that apply, and such violation is evidenced by information obtained from a HOV photo device; 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 any HOV restrictions.

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

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

2. "High-occupancy vehicle" or "HOV" shall mean vehicles with three or more occupants.

3. "HOV photo device" shall mean a device that is capable of operating independently of an enforcement officer and produces one or more images of each vehicle at the time it is in violation of HOV restrictions.

4. "HOV restrictions" shall mean restrictions, within the temporary HOV program, on the use of designated areas of the Williamsburg bridge, during time periods to be defined by the New York city department of transportation, by a vehicle other than: (i) an HOV; (ii) a vehicle registered as a commercial vehicle pursuant to part one hundred six of title fifteen of the New York codes, rules and regulations; (iii) an authorized emergency vehicle; (iv) an access-a-ride vehicle as defined in chapter five of title thirty-four of the rules of the city of New York; or (v) a bus.

5. "Temporary HOV program" shall mean a temporary program that operates exclusively within designated HOV areas on the Williamsburg bridge during periods of high-traffic volume to be determined by the New York city department of transportation. Determination of such periods shall be made based on factors that include, but are not limited to, empirical traffic analyses conducted by such department, input from the public, and guidance from appropriate government entities regarding mitigation strategies.

(d) A certificate, sworn to or affirmed by a technician employed by the city of New York, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by an HOV photo device, shall be prima facie evidence of the facts contained therein. Subject to paragraph three of subdivision (g) of this section, 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 this section.

(e) An owner liable for a violation of an HOV restriction imposed on the Williamsburg bridge in accordance with the temporary HOV program shall be liable for monetary penalties in accordance with a schedule of fines and penalties promulgated by the parking violations bureau of the city of New York; provided, however, that the monetary penalty for violating an HOV restriction shall not exceed thirty-five dollars; provided, further, than an owner shall be liable for an additional penalty not to exceed twenty-five dollars for each violation for the failure to respond to a notice of liability within the prescribed time period. All monetary penalties imposed by this section shall, within the first ten days of the month next succeeding the collection of such penalties, be paid by the collecting authority to the state comptroller to be deposited in the outer borough transportation account of the New York city transportation assistance fund established by paragraph (ii) of subdivision 1 of section twelve hundred seventy-I of the public authorities law.

(f) An imposition of liability pursuant to this section shall not be deemed a conviction of 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 the temporary HOV program. Personal delivery to 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 the temporary HOV program, the registration number of the vehicle involved in such violation, the location where such violation took place, one or more images identifying the violation, the date and time of such violation and the identification number of the HOV photo device which recorded the violation or other document locator number.

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

4. The notice of liability shall be prepared and mailed by the agency or agencies designated by the city of New York, or any other entity authorized by such city to prepare and mail such notification of violation.

5. Adjudication of the liability imposed upon owners by this section shall be by the New York city parking violations bureau.

(h) If an owner of a vehicle receives a notice of liability pursuant to this section for any time period during which such vehicle was reported to the police department as having been stolen, it shall be a valid defense to an allegation of liability for a violation of the temporary HOV program that the vehicle had been reported to the police as stolen prior to the time the violation occurred and had not been recovered by such time. For purposes of asserting the defense provided by this subdivision it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail to the parking violations bureau of such city.

(i) 1. 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 the temporary HOV program, provided that:

(i) prior to the violation, the lessor has filed with such parking violations bureau in accordance with the provisions of paragraph f-one of subdivision one of section two hundred thirty-nine of this chapter; and

(ii) within thirty-seven days after receiving notice from such 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 such 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 such bureau pursuant to regulations that may be promulgated for such purpose.

2. Failure to comply with subparagraph (ii) of paragraph one of this subdivision shall render the lessor liable for the penalty prescribed in this section.

3. Where the lessor complies with the provisions of paragraph one of this subdivision, 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.

(j) If the owner liable for a violation of the temporary HOV program was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.

(k) Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of HOV restrictions.

(l) On and after the date of restoration of regular subway passenger service in the Canarsie tunnel, the city of New York shall not be authorized or empowered to establish or continue a temporary HOV program on the Williamsburg bridge pursuant to paragraph one of subdivision (a) of this section; provided that any violations issued prior to such date may be adjudicated after such date. On and after the date of restoration of regular subway passenger service in the Canarsie tunnel, the New York city department of transportation shall not be authorized to operate HOV photo devices pursuant to paragraph one of subdivision (a) of this section; provided that any violations issued prior to such date may be adjudicated after such date.

§ 11. Section 1809-e of the vehicle traffic law is amended by adding a new subdivision 4 to read as follows:

4. The provisions of this section authorizing the imposition of a surcharge shall not apply to adjudications conducted in accordance with section eleven hundred eleven-f of this chapter.

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

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

§ 13. The New York city department of transportation shall: (i) prior to implementing a temporary high-occupancy vehicle (HOV) program on the Williamsburg bridge as authorized by section 1111-f of the vehicle and traffic law, as added by section ten of this act, and in consultation with the metropolitan transportation authority, in accordance with subdivision 4 of section 1268 of the public authorities law, as added by section one of this act, communicate to the public, including the affected communities in New York and Kings counties, the plan for HOV restrictions so as to maximize awareness of such temporary HOV program; (ii) for at least 40 days prior to implementing such temporary HOV program, send by first class mail notice of such upcoming implementation to the owner of any vehicle that is not a bus, a commercial vehicle, an authorized emergency vehicle, or an access-a-ride vehicle, identified as having been driven on the Williamsburg bridge with fewer than three occupants during time periods defined by the New York city department of transportation in accordance with the provisions of section 1111-f of the vehicle and traffic law, as added by section ten of this act; and (iii) take such measures as are necessary to implement such temporary HOV program prior to its implementation, including promulgating any rules and regulations necessary for the implementation of this act. Failure to comply with the provisions of this section shall not affect the validity or implementation of the temporary HOV program authorized by section 1111-f of the vehicle and traffic law, as added by section ten of this act.

§ 14. (a) This act shall take effect immediately; provided, however, that sections one through twelve of this act shall take effect April 1, 2019, and shall expire six months after the metropolitan transportation authority restores regular subway passenger service in the Canarsie tunnel, or April 1, 2021, whichever is earlier, when upon such date the provisions of this act shall be deemed repealed; provided that the New

York city department of transportation shall notify the legislative bill drafting commission upon the occurrence of such restoration in order that the commission may maintain an accurate and timely effective database of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.

(b) On and after the date the metropolitan transportation authority restores regular subway passenger service in the Canarsie tunnel, or April 1, 2021, whichever is earlier, the city of New York shall not be authorized or empowered to establish or continue a temporary HOV program on the Williamsburg bridge pursuant to paragraph 1 of subdivision (a) of section 1111-f of the vehicle and traffic law, as added by section ten of this act. On and after the date of restoration of regular subway passenger service in the Canarsie tunnel, or April 1, 2021, whichever is earlier, the New York city department of transportation shall not be authorized to operate HOV photo devices pursuant to paragraph 1 of subdivision (a) of section 1111-f of the vehicle and traffic law, as added by section ten of this act.

(c) Notwithstanding the expiration and repeal of certain provisions of this act, any violations issued prior to the date of restoration of regular subway passenger service in the Canarsie tunnel may be adjudicated after such date.