

# STATE OF NEW YORK

3114

2017-2018 Regular Sessions

## IN ASSEMBLY

January 26, 2017

Introduced by M. of A. ABINANTI, BUCHWALD -- read once and referred 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 § 135-a. Railroad grade crossing. A location where railroad tracks  
4 intersect a public or private highway, roadway or sidewalk.

5 § 2. The vehicle and traffic law is amended by adding a new section  
6 1170-a to read as follows:

7 § 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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1 cle, provided that such local authority has made a reasonable effort to  
2 comply with the provisions of this paragraph.

3 (b) Within the jurisdiction of any such local authority which has  
4 adopted a local law, ordinance or resolution pursuant to subdivision (a)  
5 of this section, the owner of a vehicle shall be liable for a penalty  
6 imposed pursuant to this section if such vehicle was used or operated  
7 with the permission of the owner, express or implied, in violation of  
8 section eleven hundred seventy of this article, and such violation is  
9 evidenced by information obtained from a railroad grade crossing photo  
10 violation-monitoring system; provided, however, that no owner of a vehi-  
11 cle shall be liable for a penalty imposed pursuant to this section where  
12 the operator of such vehicle has been convicted of the underlying  
13 violation of section eleven hundred seventy of this article.

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

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

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

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

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

53 2. A notice of liability shall contain the name and address of the  
54 person alleged to be liable as an owner for a violation of section elev-  
55 en hundred seventy of this article pursuant to this section, the regis-  
56 tration 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 isdiction, 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 isdiction 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 twenty 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 § 3. Subdivision 2 of section 87 of the public officers law is amended  
21 by adding a new paragraph (p) to read as follows:

22 (p) 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 § 4. This act shall take effect on the thirtieth day after it shall  
26 have become a law.