

# STATE OF NEW YORK

3139

2017-2018 Regular Sessions

## IN SENATE

January 19, 2017

Introduced by Sen. SQUADRON -- 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, in relation to civil liability of vehicle owners for maximum speed limit violations 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. The vehicle and traffic law is amended by adding a new  
2 section 1180-d to read as follows:

3 § 1180-d. Owner liability for failure of operator to comply with maxi-  
4 imum speed limits. (a) Notwithstanding any other provision of law, each  
5 city with a population of one million or more is hereby authorized and  
6 empowered to adopt and amend a local law or ordinance establishing a  
7 demonstration program imposing monetary liability on the owner of a  
8 vehicle for failure of an operator thereof to comply with maximum speed  
9 limits in such city in accordance with the provisions of this section.  
10 Such demonstration program shall empower the city of New York to install  
11 and operate a photo radar device on McGuinness Boulevard in the borough  
12 of Brooklyn within such city.

13 (b) In any city which has adopted a local law or ordinance pursuant to  
14 subdivision (a) of this section, the owner of a vehicle shall be liable  
15 for a penalty imposed pursuant to this section if such vehicle was used  
16 or operated with the permission of the owner, express or implied, in  
17 violation of subdivision (d) of section eleven hundred eighty of this  
18 article, and such violation is evidenced by information obtained from a  
19 photo radar system; provided however that no owner of a vehicle shall be  
20 liable for a penalty imposed pursuant to this section where the operator  
21 of such vehicle has been convicted of the underlying violation of subdi-  
22 vision (d) of section eleven hundred eighty of this article.

23 (c) For purposes of this section, "owner" shall have the meaning  
24 provided in article two-B of this chapter. For purposes of this section,

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

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1 "photo radar system" shall mean a speed camera installed to work in  
2 conjunction with Doppler radar and a computer monitoring system which  
3 automatically produces two or more photographs, two or more microphoto-  
4 graphs, a videotape or other recorded images of each vehicle at the time  
5 it is used or operated in violation of subdivision (d) of section eleven  
6 hundred eighty of this article.

7 (d) A certificate, sworn to or affirmed by a technician employed by  
8 the city in which the charged violation occurred, or a facsimile there-  
9 of, based upon inspection of photographs, microphotographs, videotape or  
10 other recorded images produced by a photo radar system, shall be prima  
11 facie evidence of the facts contained therein. Any photographs, micro-  
12 photographs, videotape or other recorded images evidencing such a  
13 violation shall be available for inspection in any proceeding to adjudi-  
14 cate the liability for such violation pursuant to a local law or ordi-  
15 nance adopted pursuant to this section.

16 (e) An owner liable for a violation of subdivision (d) of section  
17 eleven hundred eighty of this article pursuant to a local law or ordi-  
18 nance adopted pursuant to this section shall be liable for monetary  
19 penalties in accordance with a schedule of fines and penalties to be set  
20 forth in such local law or ordinance, except that in a city which, by  
21 local law, has authorized the adjudication of such owner liability by a  
22 parking violations bureau, such schedule shall be promulgated by such  
23 bureau. The liability of the owner pursuant to this section shall not  
24 exceed one hundred dollars for each violation; provided, however, that  
25 such local law or ordinance may provide for an additional penalty not in  
26 excess of twenty-five dollars for each violation for the failure to  
27 respond to a notice of liability within the prescribed time period.

28 (f) An imposition of liability under a local law or ordinance adopted  
29 pursuant to this section shall not be deemed a conviction as an operator  
30 and shall not be made part of the operating record of the person upon  
31 whom such liability is imposed nor shall it be used for insurance  
32 purposes in the provision of motor vehicle insurance coverage.

33 (g) 1. A notice of liability shall be sent by first class mail to each  
34 person alleged to be liable as an owner for a violation of subdivision  
35 (d) of section eleven hundred eighty of this article pursuant to this  
36 section. Personal delivery on the owner shall not be required. A manual  
37 or automatic record of mailing prepared in the ordinary course of busi-  
38 ness shall be prima facie evidence of the facts contained therein.

39 2. A notice of liability shall contain the name and address of the  
40 person alleged to be liable as an owner for a violation of subdivision  
41 (d) of section eleven hundred eighty of this article pursuant to this  
42 section, the registration number of the vehicle involved in such  
43 violation, the location where such violation took place, the date and  
44 time of such violation and the identification number of the camera which  
45 recorded the violation or other document locator number.

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

52 4. The notice of liability shall be prepared and mailed by the city  
53 having jurisdiction over the intersection where the violation occurred,  
54 or by any other entity authorized by the city to prepare and mail such  
55 notification of violation.

1 (h) Adjudication of the liability imposed upon owners by this section  
2 shall be by a traffic violations bureau established pursuant to section  
3 three hundred seventy of the general municipal law or, if there be none,  
4 by the court having jurisdiction over traffic infractions, except that  
5 any city which has established an administrative tribunal to hear and  
6 determine complaints of traffic infractions constituting parking, stand-  
7 ing or stopping violations may, by local law, authorize such adjudi-  
8 cation by such tribunal.

9 (i) If an owner receives a notice of liability pursuant to this  
10 section for any time period during which the vehicle was reported to the  
11 police department as having been stolen, it shall be a valid defense to  
12 an allegation of liability for a violation of subdivision (d) of section  
13 eleven hundred eighty of this article pursuant to this section that the  
14 vehicle had been reported to the police as stolen prior to the time the  
15 violation occurred and had not been recovered by such time. For purposes  
16 of asserting the defense provided by this subdivision it shall be suffi-  
17 cient that a certified copy of the police report on the stolen vehicle  
18 be sent by first class mail to the traffic violations bureau, court  
19 having jurisdiction or parking violations bureau.

20 (j) 1. In a city where the adjudication of liability imposed upon  
21 owners pursuant to this section is by a traffic violations bureau or a  
22 court having jurisdiction, an owner who is a lessor of a vehicle to  
23 which a notice of liability was issued pursuant to subdivision (g) of  
24 this section shall not be liable for the violation of subdivision (d) of  
25 section eleven hundred eighty of this article, provided that he or she  
26 sends to the traffic violations bureau or court having jurisdiction a  
27 copy of the rental, lease or other such contract document covering such  
28 vehicle on the date of the violation, with the name and address of the  
29 lessee clearly legible, within thirty-seven days after receiving notice  
30 from the bureau or court of the date and time of such violation, togeth-  
31 er with the other information contained in the original notice of  
32 liability. Failure to send such information within such thirty-seven day  
33 time period shall render the owner liable for the penalty prescribed by  
34 this section. Where the lessor complies with the provisions of this  
35 paragraph, the lessee of such vehicle on the date of such violation  
36 shall be deemed to be the owner of such vehicle for purposes of this  
37 section, shall be subject to liability for the violation of subdivision  
38 (d) of section eleven hundred eighty of this article pursuant to this  
39 section and shall be sent a notice of liability pursuant to subdivision  
40 (g) of this section.

41 2. (i) In a city which, by local law, has authorized the adjudication  
42 of liability imposed upon owners by this section by a parking violations  
43 bureau, an owner who is a lessor of a vehicle to which a notice of  
44 liability was issued pursuant to subdivision (g) of this section shall  
45 not be liable for the violation of subdivision (d) of section eleven  
46 hundred eighty of this article, provided that:

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

50 (B) within thirty-seven days after receiving notice from the bureau of  
51 the date and time of a liability, together with the other information  
52 contained in the original notice of liability, the lessor submits to the  
53 bureau the correct name and address of the lessee of the vehicle identi-  
54 fied in the notice of liability at the time of such violation, together  
55 with such other additional information contained in the rental, lease or

1 other contract document, as may be reasonably required by the bureau  
2 pursuant to regulations that may be promulgated for such purpose.

3 (ii) Failure to comply with clause (B) of subparagraph (i) of this  
4 paragraph shall render the owner liable for the penalty prescribed in  
5 this section.

6 (iii) Where the lessor complies with the provisions of this paragraph,  
7 the lessee of such vehicle on the date of such violation shall be deemed  
8 to be the owner of such vehicle for purposes of this section, shall be  
9 subject to liability for such violation pursuant to this section and  
10 shall be sent a notice of liability pursuant to subdivision (g) of this  
11 section.

12 (k) If the owner liable for a violation of subdivision (d) of section  
13 eleven hundred eighty of this article pursuant to this section was not  
14 the operator of the vehicle at the time of the violation, the owner may  
15 maintain an action for indemnification against the operator.

16 (l) Nothing in this section shall be construed to limit the liability  
17 of an operator of a vehicle for any violation of subdivision (d) of  
18 section eleven hundred eighty of this article.

19 (m) The photo radar devices installed and operated pursuant to the  
20 demonstration program, established under subdivision (a) of this  
21 section, shall be used solely for the purposes of carrying out photo-  
22 monitoring for such demonstration program.

23 (n) Any city which adopts a demonstration program pursuant to subdivi-  
24 sion (a) of this section shall submit a report on the results of the use  
25 of a photo radar system to the governor, the temporary president of the  
26 senate and the speaker of the assembly by March first, two thousand  
27 eighteen. Such report shall include, but not be limited to:

28 1. a description of the locations where photo radar systems were used;  
29 2. the number of violations recorded at each such location and in the  
30 aggregate on a daily, weekly and monthly basis;

31 3. the total number of notices of liability issued;

32 4. the number of fines and total amount of fines paid after first  
33 notice of liability;

34 5. the number of violations adjudicated and results of such adjudi-  
35 cations including breakdowns of dispositions made;

36 6. the total amount of revenue realized by such city; and

37 7. quality of the adjudication process and its results.

38 § 2. This act shall take effect on the thirtieth day after it shall  
39 have become a law and shall remain in full force and effect for three  
40 years after such effective date when upon such date the provisions of  
41 this act shall be deemed repealed; provided, however, any such local  
42 laws as may be enacted pursuant to this act shall remain in full force  
43 and effect only until the expiration of three years from such effective  
44 date.