STATE OF NEW YORK

6012--A

2019-2020 Regular Sessions

IN ASSEMBLY

February 26, 2019

Introduced by M. of A. ABINANTI, BUCHWALD -- read once and referred to the Committee on Transportation -- 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 and certain public authorities 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:

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

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

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

§ 1170-a. Owner liability for failure of operator to obey signal indicating approach of train. (a) 1. Notwithstanding any other provision of law, any political subdivision is hereby authorized and empowered to adopt and amend a local law, ordinance or resolution establishing a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with section eleven hundred seventy of this article. Such demonstration program shall empower a political subdivision to install and operate railroad grade crossing photo violation-monitoring devices at any railroad grade crossing within its jurisdiction. If installation, operation or maintenance of equipment pursuant to this section requires entry upon the property of the commuter railroad, the political subdivision or its agent shall first secure permission from such railroad to enter upon the property.

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

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All such work shall be performed in accordance with applicable federal and state requirements and industry safety standards. The cost of such photo violation-monitoring devices may be borne by the political subdivision, a commuter railroad operating within the political subdivision, or a combination of both such political subdivision and commuter railroad pursuant to a memorandum of understanding.

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

(b) Within the jurisdiction of any such political subdivision which has adopted a local law, ordinance or resolution 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 section eleven hundred seventy of this article, and such violation is evidenced by information obtained from a railroad grade crossing photo violation-monitoring system; 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 section eleven hundred seventy of this article.

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

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

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

5. "Operator" shall have the same meaning as provided in section two hundred thirty-nine of this chapter.

(d) A certificate, sworn to or affirmed by a technician employed by the political subdivision in which the charged violation occurred, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a railroad grade crossing photo violation-monitoring system, shall be prima facie evidence of the facts contained therein. 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 a local law, ordinance or resolution adopted pursuant to this section.

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

(f) An imposition of liability under a local law, ordinance or resolution adopted pursuant to this section shall not be deemed a conviction as 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 section eleven hundred seventy of this article pursuant to this section. Personal delivery on 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 section eleven hundred seventy of this article pursuant to this section, the registration number of the vehicle involved in such violation, the location where such violation took place, the date and time of such violation and the identification number of the camera 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 political subdivision, or by any other entity authorized by such political subdivision to prepare and mail such notification of violation.

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

(i) If an owner receives a notice of liability pursuant to this section for any time period during which the vehicle was reported to a law enforcement agency as having been stolen, it shall be a valid defense to an allegation of liability for a violation of section eleven hundred seventy of this article pursuant to this section that the vehicle had been reported to the police as stolen after the owner found out it was stolen and had not been recovered by the time the violation occurred. For purposes of asserting the defense provided by this subdivision it shall be sufficient that a certified copy of a police report on the stolen vehicle be sent by first class mail to the court or administrative tribunal having jurisdiction.

(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 an administrative tribunal, 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 tribunal the vehicle identification information 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 tribunal 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 tribunal 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 tribunal 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 using or operating such vehicle without the permission 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 operator of such vehicle was using or operating such vehicle with the permission of the owner at the time such operator failed to obey a railroad sign or signal indicating the approach of a train.

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

(m) In any such political subdivision which adopts a demonstration program pursuant to subdivision (a) of this section, such political subdivision shall submit an annual report on the results of the use of a railroad grade crossing photo violation-monitoring system to the governor, the temporary president of the senate and the speaker of the assembly on or before June first, two thousand twenty and on the same date in each succeeding year in which the demonstration program is operable. Such report shall include, but not be limited to:

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

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

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

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

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

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

7. the number of violations adjudicated and results of such adjudications including breakdowns of dispositions made for violations recorded by such systems;

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

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

10. quality of the adjudication process and its results.

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

§ 3. The vehicle and traffic law is amended by adding a new section 1633 to read as follows:

§ 1633. Railroad grade crossing enforcement; demonstration program. (a) 1. Notwithstanding any other provision of law, the Long Island Rail Road and the Metro-North Commuter Railroad (hereinafter referred to as "the commuter railroads") are hereby authorized and empowered to implement a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with section eleven hundred seventy of this chapter. Such demonstration program shall empower each of the commuter railroads to install, operate and maintain railroad grade crossing photo violation-monitoring devices at any railroad grade crossing with a sign or signal that indicates the approach of one of its trains. If installation, operation or maintenance

of equipment pursuant to this section requires entry upon the property of the political subdivision, the commuter railroad or its agent shall first secure permission from such political subdivision to enter upon the property. All such work shall be performed in accordance with applicable federal and state requirements and industry safety standards. The costs associated with the installation, operation and maintenance of the railroad grade crossing photo violation-monitoring equipment located on the railroad right of way shall be borne by the commuter railroad, provided, however, in any case where the equipment is to be located on both railroad property and the property of the political subdivision, the terms and conditions for installation, operation and maintenance of such equipment, including cost apportionment, if applicable, shall be determined pursuant to a memorandum of understanding between the commuter railroad and the political subdivision.

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

(b) Subject to the provisions of subdivision (a) of this section and subject to the adjudicatory process of the appropriate political subdivision, 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 section eleven hundred seventy of this chapter, and such violation is evidenced by information obtained from a railroad grade crossing photo violation-monitoring system; 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 section eleven hundred seventy of this chapter.

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

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

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

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

4. "Operator" shall have the same meaning as provided in section two hundred thirty-nine of this chapter.

(d) A certificate, sworn to or affirmed by a technician employed by the commuter railroad where the charged violation occurred, or a facsimile thereof, based upon inspection or photographs, microphotographs, videotape or other recorded images produced by a railroad grade crossing photo violation-monitoring system, shall be prima facie evidence of the

facts contained therein. 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 law.

(e) An owner liable for a violation of section eleven hundred seventy of this chapter pursuant to a railroad grade crossing demonstration program adopted pursuant to this section shall be liable for monetary penalties not to exceed one hundred dollars for each violation provided, however, that an adjudicating authority may provide for an additional penalty of not in excess of twenty-five dollars for each violation for the failure to respond to a notice of liability within the prescribed period of time.

(f) An imposition of liability pursuant to this section shall not be deemed a conviction as 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 section eleven hundred seventy of this chapter pursuant to this section and a copy of such notice shall be sent by first class mail to the political subdivision. Personal delivery on 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 section eleven hundred seventy of this chapter pursuant to this section, the registration number of the vehicle involved in such violation, the location where such violation took place, the date and time of such violation and the identification number of the camera 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 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 commuter railroad, or by any other entity authorized by such commuter railroad to prepare and mail such notification of violation.

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

(i) If an owner receives a notice of liability pursuant to this section for any time period during which the vehicle was reported to a law enforcement agency as having been stolen, it shall be a valid defense to an allegation of liability for a violation of section eleven hundred seventy of this chapter pursuant to this section that the vehicle had been reported to the police as stolen after the owner found out it was stolen and had not been recovered by the time the violation occurred. For purposes of asserting the defense provided by this subdivision it shall be sufficient that a certified copy of a police report

on the stolen vehicle be sent by first class mail to the court or administrative tribunal having jurisdiction or parking violations bureau.

(j) 1. In any 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 chapter, 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 chapter pursuant to this section and shall be sent a notice of liability pursuant to subdivision (g) of this section.

2. (i) In any political subdivision which has authorized the adjudication of liability imposed upon owners by this section by an administrative tribunal, 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 chapter, provided that:

(A) Prior to the violation, the lessor has filed with the tribunal the vehicle identification information 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 tribunal 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 tribunal 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 tribunal 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 chapter 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 using or operating such vehicle without the permission 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 operator of such vehicle was using or operating such vehicle with the permission of the owner at the time such operator failed to obey a railroad sign or signal indicating the approach of a train.

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

(m) Where a commuter railroad adopts a demonstration program pursuant to subdivision (a) of this section, such railroad shall submit an annual report on the results of the use of a railroad grade crossing photo violation-monitoring system to the governor, the temporary president of the senate and speaker of the assembly on or before June first, two thousand twenty and on the same date in each succeeding year in which the demonstration program is operable. Such report shall include, but not be limited to:

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

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

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

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

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

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

7. the number of violations adjudicated and results of such adjudications including breakdowns of dispositions made for violations recorded by such systems;

8. the total amount of revenue realized by all applicable political subdivisions from such adjudications;

9. expenses incurred by such commuter railroad and political subdivision in connection with the program; and

10. quality of the adjudication process and its results.

(n) It shall be a defense to any prosecution for a violation of section eleven hundred seventy of this chapter pursuant to a local law or ordinance adopted pursuant to this section that there is verified evidence that the railroad signal indications were malfunctioning at the time of the alleged violation.

§ 4. The opening paragraph of subdivision 1 of section 1803 of the vehicle and traffic law, as amended by chapter 385 of the laws of 1999, is amended to read as follows:

Except as otherwise provided in subdivision five of section two hundred twenty-seven of this chapter, section eleven hundred seventy-a of this chapter, section sixteen hundred thirty-three of this chapter and as provided in section eleven hundred ninety-seven of this chapter, section ninety of the state finance law and sections fourteen-f and one hundred forty of the transportation law, all fines and penalties collected under a sentence or judgment of conviction of a violation of

this chapter or of any act relating to the use of highways by motor vehicles or trailers, now in force or hereafter enacted, shall be distributed in the following manner:

§ 5. Section 1803 of the vehicle and traffic law is amended by adding a new subdivision 10 to read as follows:

10. Where a commuter railroad establishes a railroad grade crossing demonstration program pursuant to section sixteen hundred thirty-three of this chapter, all fines, penalties and forfeitures collected pursuant to such section shall be paid to the county, city, town or village within whose jurisdiction the subject railroad grade crossing is located.

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

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

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