

# STATE OF NEW YORK

252--A

Cal. No. 920

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

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  
15 eleven hundred seventy of this article. Such demonstration program shall  
16 empower a political subdivision to install and operate railroad grade  
17 crossing photo violation-monitoring devices at any railroad grade cross-

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

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1 ing within its jurisdiction. If installation, operation or maintenance  
2 of equipment pursuant to this section requires entry upon the property  
3 of the commuter railroad, the political subdivision or its agent shall  
4 first secure permission from such railroad to enter upon the property.  
5 All such work shall be performed in accordance with applicable federal  
6 and state requirements and industry safety standards. The cost of such  
7 photo violation-monitoring devices may be borne by the political subdivi-  
8 vision, a commuter railroad operating within the political subdivision,  
9 or a combination of both such political subdivision and commuter rail-  
10 road pursuant to a memorandum of understanding.

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

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

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

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

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

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

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

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

51 (d) A certificate, sworn to or affirmed by a technician employed by  
52 the political subdivision in which the charged violation occurred, or a  
53 facsimile thereof, based upon inspection of photographs, microphoto-  
54 graphs, videotape or other recorded images produced by a railroad grade  
55 crossing photo violation-monitoring system, shall be prima facie  
56 evidence of the facts contained therein. Any photographs, microphoto-

1 graphs, videotape or other recorded images evidencing such a violation  
2 shall be available for inspection in any proceeding to adjudicate the  
3 liability for such violation pursuant to a local law, ordinance or  
4 resolution adopted pursuant to this section.

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

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

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

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

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

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

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

49 (i) If an owner receives a notice of liability pursuant to this  
50 section for any time period during which the vehicle was reported to a  
51 law enforcement agency as having been stolen, it shall be a valid  
52 defense to an allegation of liability for a violation of section eleven  
53 hundred seventy of this article pursuant to this section that the vehi-  
54 cle had been reported to the police as stolen after the owner found out  
55 it was stolen and had not been recovered by the time the violation  
56 occurred. For purposes of asserting the defense provided by this subdi-

1 vision it shall be sufficient that a certified copy of a police report  
2 on the stolen vehicle be sent by first class mail to the court or admin-  
3 istrative tribunal having jurisdiction.

4 (j) 1. In such political subdivision where the adjudication of liabil-  
5 ity imposed upon owners pursuant to this section is by a court having  
6 jurisdiction, an owner who is a lessor of a vehicle to which a notice of  
7 liability was issued pursuant to subdivision (g) of this section shall  
8 not be liable for the violation of section eleven hundred seventy of  
9 this article, provided that he or she sends to the court having juris-  
10 isdiction a copy of the rental, lease or other such contract document  
11 covering such vehicle on the date of the violation, with the name and  
12 address of the lessee clearly legible, within thirty-seven days after  
13 receiving notice from the court of the date and time of such violation,  
14 together with the other information contained in the original notice of  
15 liability. Failure to send such information within such thirty-seven  
16 day time period shall render the owner liable for the penalty prescribed  
17 by this section. Where the lessor complies with the provisions of this  
18 paragraph, the lessee of such vehicle on the date of such violation  
19 shall be deemed to be the owner of such vehicle for purposes of this  
20 section, shall be subject to liability for the violation of section  
21 eleven hundred seventy of this article pursuant to this section and  
22 shall be sent a notice of liability pursuant to subdivision (g) of this  
23 section.

24 2. (I) In such political subdivision which has authorized the adjudi-  
25 cation of liability imposed upon owners by this section by an adminis-  
26 trative tribunal, an owner who is a lessor of a vehicle to which a  
27 notice of liability was issued pursuant to subdivision (g) of this  
28 section shall not be liable for the violation of section eleven hundred  
29 seventy of this article, provided that:

30 (A) prior to the violation, the lessor has filed with the tribunal the  
31 vehicle identification information in accordance with the provisions of  
32 section two hundred thirty-nine of this chapter; and

33 (B) within thirty-seven days after receiving notice from the tribunal  
34 of the date and time of a liability, together with the other information  
35 contained in the original notice of liability, the lessor submits to the  
36 tribunal the correct name and address of the lessee of the vehicle iden-  
37 tified in the notice of liability at the time of such violation, togeth-  
38 er with such other additional information contained in the rental, lease  
39 or other contract document, as may be reasonably required by the tribu-  
40 nal pursuant to regulations that may be promulgated for such purpose.

41 (II) Failure to comply with clause (B) of subparagraph (I) of this  
42 paragraph shall render the owner liable for the penalty prescribed in  
43 this section.

44 (III) Where the lessor complies with the provisions of this paragraph,  
45 the lessee of such vehicle on the date of such violation shall be deemed  
46 to be the owner of such vehicle for purposes of this section, shall be  
47 subject to liability for such violation pursuant to this section and  
48 shall be sent a notice of liability pursuant to subdivision (g) of this  
49 section.

50 (k) 1. If the owner liable for a violation of section eleven hundred  
51 seventy of this article pursuant to this section was not the operator of  
52 the vehicle at the time of the violation, the owner may maintain an  
53 action for indemnification against the operator.

54 2. Notwithstanding any other provision of this section, no owner of a  
55 vehicle shall be subject to a monetary fine imposed pursuant to this  
56 section if the operator of such vehicle was using or operating such

1 vehicle without the permission of the owner at the time such operator  
2 failed to obey a railroad sign or signal indicating the approach of a  
3 train. For purposes of this subdivision there shall be a presumption  
4 that the operator of such vehicle was using or operating such vehicle  
5 with the permission of the owner at the time such operator failed to  
6 obey a railroad sign or signal indicating the approach of a train.

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

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

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

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

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

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

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

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

35 7. the number of violations adjudicated and results of such adjudi-  
36 cations including breakdowns of dispositions made for violations  
37 recorded by such systems;

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

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

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

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

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

50 Except as otherwise provided in subdivision five of section two  
51 hundred twenty-seven of this chapter, section eleven hundred seventy-a  
52 of this chapter and as provided in section eleven hundred ninety-seven  
53 of this chapter, section ninety of the state finance law and sections  
54 fourteen-f and one hundred forty of the transportation law, all fines  
55 and penalties collected under a sentence or judgment of conviction of a  
56 violation of this chapter or of any act relating to the use of highways

1 by motor vehicles or trailers, now in force or hereafter enacted, shall  
2 be distributed in the following manner:

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

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

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