STATE OF NEW YORK

6057

2021-2022 Regular Sessions

IN SENATE

April 1, 2021

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Cities 1

AN ACT to amend the administrative code of the city of New York, in relation to imposing liability on owners of motor vehicles for failure to comply with vehicle sound limits; to amend the public officers law, in relation to access to certain agency records; and providing for the repeal of such provisions upon the expiration thereof

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

Section 1. The administrative code of the city of New York is amended by adding a new section 24-236.1 to read as follows:

§ 24-236.1 Owner liability for failure to comply with motor vehicle sound limits. (a) Definitions. For the purposes of this section, the following terms shall have the following meanings:

(1) "Decibel reader" shall refer to a measuring instrument used to assess noise or sound levels by measuring sound pressure and which expresses such level in the unit of a decibel (dB).

(2) "Lessee" shall mean any person, corporation, firm, partnership, agency, association or organization that rents, bails, leases or contracts for the use of one or more vehicles and has the exclusive use thereof for any period of time.

(3) "Lessor" shall mean any person, corporation, firm, partnership, agency, association or organization engaged in the business of renting or leasing vehicles to any lessee or bailee under a rental agreement, lease or otherwise, wherein the said lessee or bailee has the exclusive use of said vehicle for any period of time.

(4) "Manual uniform traffic-control device" or "MUTCD" shall mean the manual and specifications for a uniform system of traffic-control devices maintained by the state commissioner of transportation pursuant to section sixteen hundred eighty of the vehicle and traffic law.

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

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(5) "Motor vehicle owner" shall mean any person, corporation, partnership, firm, agency, association, lessor, or organization who at the time of the issuance of a notice of violation:

(i) is the beneficial or equitable owner of such vehicle;

(ii) has title to such vehicle;

(iii) is the registrant or co-registrant of such vehicle which is registered with the department of motor vehicles of this state or any other state, territory, district, province, nation or other jurisdiction;

(iv) uses such vehicle in its vehicle renting and/or leasing business; or

(v) is an owner of such vehicle as defined by section one hundred twenty-eight of the vehicle and traffic law.

Provided that "motor vehicle" shall retain the same meaning as provided in subdivision thirty-eight of section 24-203 of this chapter.

(6) "Motor vehicle noise limits" shall refer to the noise limits prescribed in section 24-236 of this subchapter.

(7) "Notice of violation" shall refer to the notice described in section 25-259 of this code.

(8) "Operators of photo noise violation monitoring systems" shall mean any natural or legal person authorized to set up, test, or operate the noise violation monitoring system described herein by the city of New York.

(9) "Photo noise monitoring system" shall mean a mobile or fixed vehicle sensor installed to work in conjunction with a noise measuring device such as a decibel reader 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 the motor vehicle noise limits prescribed in section 24-236 of this subchapter.

(b) (1) Notwithstanding any provision of law to the contrary, the city is hereby authorized to establish a demonstration program of photo noise violation monitoring systems to monitor compliance with motor vehicle noise limits. Any vehicle found to be violating such limits shall be issued a notice of violation and subject to the civil penalty prescribed in table I of paragraph five of subdivision (b) of section 24-257 of this chapter.

(2) No photo noise violation monitoring system shall be used unless (i) on the day it is to be used it has successfully passed a self-test of its functions; and (ii) it has undergone an annual calibration check performed pursuant to paragraph four of this subdivision. The city shall install signs giving notice to approaching motor vehicle operators that a photo noise violation monitoring system is in use, in conformance with standards established in the MUTCD.

(3) Operators of photo noise violation monitoring systems shall have completed training in the procedures for setting up, testing, and operating such systems. Each such operator shall maintain a daily camera log report for each such system that (i) states the date and time when, and the location where, the system was set up that day; and (ii) states that such operator successfully performed, and the system passed, the self-tests of such system before producing a recorded image that day. The city shall retain each such daily camera log report until the later of the date on which the photo noise violation monitoring system to which it applies has been permanently removed from use or the final resolution of all cases involving notices of violation issued based on photographs,

microphotographs, video or other recorded images produced by such system.

(4) Each photo noise violation monitoring system shall undergo an annual calibration check performed by an independent calibration laboratory which shall issue a signed certificate of calibration. The city shall keep each such annual certificate of calibration on file until the final resolution of all cases involving a notice of violation issued during such year which were based on photographs, microphotographs, videotape or other recorded images produced by such photo noise violation monitoring system.

(5) It shall be a defense to any prosecution for a violation of motor vehicle noise limits pursuant to this section that such photo noise violation monitoring system was malfunctioning at the time of the alleged violation.

(6) (i) Such demonstration program shall utilize necessary technologies to ensure, to the extent practicable, that photographs, microphotographs, videotape or other recorded images produced by such photo noise 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 violation issued pursuant to this section shall be dismissed solely because such a photograph, microphotograph, videotape or other recorded image allows for the identification of the driver, the passengers, or the contents of vehicles where the city shows that it made reasonable efforts to comply with the provisions of this subparagraph in such case.

(ii) Photographs, microphotographs, videotape or any other recorded image from a photo noise violation monitoring system shall be for the exclusive use of the city for the purpose of the adjudication of liability imposed pursuant to section 24-257 of this chapter and of the motor vehicle owner receiving a notice of violation, and shall be destroyed by the city upon the final resolution of the notice of violation to which such photographs, microphotographs, videotape or other recorded images relate, or one year following the date of issuance of such notice of violation, whichever is later. Notwithstanding the provisions of any other law, rule or regulation to the contrary, photographs, microphotographs, videotape or any other recorded image from a photo noise violation monitoring system shall not be available to the public, nor subject to civil or criminal process or discovery, nor used by any court or administrative or adjudicatory body in any action or proceeding therein except that which is necessary for the adjudication of a notice of violation, and no public entity or employee, officer or agent thereof shall disclose such information, except that such photographs, microphotographs, videotape or any other recorded images from such systems:

(A) shall be available for inspection and copying and use by the motor vehicle owner and operator for so long as such photographs, microphotographs, videotape or other recorded images are required to be maintained or are maintained by such public entity, employee, officer or agent; and

(B) (1) shall be furnished when described in a search warrant issued by a court authorized to issue such a search warrant pursuant to article six hundred ninety of the criminal procedure law or a federal court authorized to issue such a search warrant under federal law, where such search warrant states that there is reasonable cause to believe such information constitutes evidence of, or tends to demonstrate that, a misdemeanor or felony offense was committed in this state or another state, or that a particular person participated in the commission of a misdemeanor or felony offense in this state or another state, provided,

however, that if such offense was against the laws of another state, the court shall only issue a warrant if the conduct comprising such offense would, if occurring in this state, constitute a misdemeanor or felony against the laws of this state;

(2) shall be furnished in response to a subpoena duces tecum signed by a judge of competent jurisdiction and issued pursuant to article six hundred ten of the criminal procedure law or a judge or magistrate of a federal court authorized to issue such a subpoena duces tecum under federal law, where the judge finds and the subpoena states that there is reasonable cause to believe such information is relevant and material to the prosecution, or the defense, or the investigation by an authorized law enforcement official, of the alleged commission of a misdemeanor or felony in this state or another state, provided, however, that if such offense was against the laws of another state, such judge or magistrate shall only issue such subpoena if the conduct comprising such offense would, if occurring in this state, constitute a misdemeanor or felony in this state; and

(3) may, if lawfully obtained pursuant to this clause and clause (A) of this subparagraph and otherwise admissible, be used in such criminal action or proceeding.

(7) 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 a photo noise violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, micro-photographs, videotape or other recorded images evidencing such a violation shall include at least two date and time stamped images of the rear of the motor vehicle that include the same stationary object near the motor vehicle and shall be available for inspection reasonably in advance of and at any proceeding to adjudicate the liability for such violation pursuant to subchapter eight of this chapter.

(8) A notice of violation shall be sent by first class mail to each person alleged to be liable as a motor vehicle owner for a violation of motor vehicle noise limits, within fourteen business days if such owner is a resident of this state and within forty-five business days if such owner is a non-resident. Personal delivery on the owner shall not be required. A manual or automatic record of mailing prepared in the ordi-nary course of business shall be prima facie evidence of the facts contained therein.

(9) A notice of violation shall contain the name and address of the person alleged to be liable as a motor vehicle owner for a violation of motor vehicle noise limits, as documented by a photo noise violation monitoring system, the registration number of the vehicle involved in such violation, the location where such violation took place, the date and time of such violation, the identification number of the camera which recorded the violation or other document locator number, at least two date and time stamped images of the rear of the motor vehicle that include the same stationary object near the motor vehicle, and the certificate charging the violation, which shall be a statement within the notice of violation that an owner violated motor vehicle noise limits pursuant to this section and is liable for penalties in accord-ance with this section.

(10) The notice of violation 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 in a hearing pursuant to section 24-263 of this chapter.

(11) If a motor vehicle owner receives a notice of violation pursuant to this section for any time period during which the vehicle or the number plate or plates of 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 motor vehicle noise limits that the vehicle or the number plate or plates of such 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 paragraph, it shall be sufficient that a certified copy of the police report on the stolen vehicle or number plate or plates of such vehicle be sent by first class mail to the environmental control board of the city of New York.

(12) A motor vehicle owner who is a lessor of a vehicle to which a notice of violation is issued shall not be liable for the violation of motor vehicle noise limits, provided that:

(i) prior to the violation, the lessor has filed with the environmental control board of the city of New York in accordance with the provisions of section two hundred thirty-nine of the vehicle and traffic law; and

(ii) within thirty-seven days after receiving notice from such board of the date and time of the violation, together with the other information contained in the notice of violation, the lessor submits to such board the correct name and address of the lessee of the vehicle identified in the notice of violation at the time of such violation, together with such additional information contained in the rental, lease, or other contract document, as may be reasonably required by such board pursuant to regulations promulgated for such purpose.

(13) Failure to comply with the provisions of paragraph twelve of this subdivision shall render the motor vehicle owner liable for the penalty prescribed in table I of paragraph five of subdivision (b) of section 24-257 of this chapter.

(14) Where the lessor complies with the provisions of paragraph twelve 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 violation pursuant to paragraph eight of this section.

(15) If the motor vehicle owner liable for a violation of motor vehicle noise limits 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.

(16) Notwithstanding any other provision of this section, no owner of a vehicle shall be subject to a monetary fine imposed pursuant to table I of paragraph five of subdivision (b) of section 24-257 of this chapter if the operator of such vehicle was operating such vehicle without the consent of the owner at the time of the violation. For purposes of this paragraph there shall be a presumption that the operator of such vehicle was operating such vehicle with the consent of the owner at the time of such violation.

(c) If the city adopts a demonstration program pursuant to subdivision (b) of this section it shall conduct a study and submit an annual report on the results of the use of photo devices to the governor, the temporary president of the senate and the speaker of the assembly on or before June first of the year in which this section is enacted and on the same date in each succeeding year in which the demonstration program is operable. Such report shall include:

(1) the locations where and dates when photo noise violation monitoring systems were used;

(2) the number of violations recorded within the city, in the aggregate on a daily, weekly and monthly basis;

(3) the total number of notices of violation issued for violations recorded by such systems;

(4) the number of fines and total amount of fines paid after the first notice of violation issued for violations recorded by such systems;

(5) the number of violations adjudicated in accordance with subchapter eight of this chapter and the results of such adjudications including breakdowns of dispositions made for violations recorded by such systems;

(6) the total amount of revenue realized by the city in connection with the program;

(7) the expenses incurred by the city in connection with the program; and

(8) the quality of the adjudication process and its results.

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

(r) are photographs, microphotographs, videotape or other recorded images prepared under the authority of section 24-236.1 of the administrative code of the city of New York.

§ 3. The purchase or lease of equipment for a demonstration program pursuant to section 24-236.1 of the administrative code of the city of New York shall be subject to the provisions of section 103 of the general municipal law.

§ 4. This act shall take effect on the sixtieth day after it shall have become a law and shall expire 3 years after such effective date when upon such date the provisions of this act shall be deemed repealed. Effective immediately, any rules necessary for the implementation of this act on its effective date are authorized to be promulgated on or before such effective date.