STATE OF NEW YORK

6242

2021-2022 Regular Sessions

IN SENATE

April 19, 2021

Introduced by Sen. MAYER -- 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 authorizing the county of Westchester to establish a noise demonstration program; to amend the vehicle and traffic law and the general municipal law, in relation to adjudications and owner liability for violating maximum allowable vehicle sound levels; to amend the public officers law, in relation to accessing records; 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. The vehicle and traffic law is amended by adding a new section 387 to read as follows:

§ 387. Owner liability for failure of operator to comply with maximum allowable vehicle sound levels. (a) 1. Notwithstanding any other provision of law, the county of Westchester is hereby authorized and empowered to adopt and amend a local law or ordinance establishing a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with maximum allowable vehicle sound levels in such county in accordance with subdivision three of section three hundred eighty-six of this article. Such demonstration program shall empower such county to install and operate noise violation-monitoring systems at no more than five zones within and under the jurisdiction of such county at any one time. Such demonstration program shall be established no later than December thirty-first, two thousand twenty-two.

2. Such demonstration program shall utilize necessary technologies to ensure, to the extent practicable, that photographs and/or videos produced by such 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 liability issued pursuant

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

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to this section shall be dismissed solely because a photograph, photographs, a video or videos allow for the identification of the contents of a vehicle, provided that such county has made a reasonable effort to comply with the provisions of this paragraph.

(b) If such local law or ordinance is adopted 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 subdivision three of section three hundred eighty-six of this article, and such violation is evidenced by information obtained from a noise violation-monitoring system.

(c) For purposes of this section, "owner" shall have the meaning provided in article two-B of this chapter. For purposes of this section, "noise violation-monitoring system" shall mean a vehicle noise enforcement camera which automatically produces audio of a vehicle and two or more photographs, two or more microphotographs, a videotape, or other recorded images of such vehicle at the time it is used or operated in violation of subdivision three of section three hundred eighty-six of this article.

(d) A certificate, sworn to or affirmed by a technician employed by Westchester county in which the charged violation occurred, or a facsimile thereof, based upon inspection of the recorded audio, photographs, microphotographs, videotape or other recorded images produced by a noise violation-monitoring system, shall be prima facie evidence of the facts contained therein. Any recorded audio, 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 or ordinance adopted pursuant to this section.

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

(f) 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 subdivision three of section three hundred eighty-six 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 subdivision three of section three hundred eighty-six 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 persons 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 Westchester county or by any other entity authorized by such county to prepare and mail such notification of violation.

(g) Adjudication of the liability imposed upon owners by this section shall be by a traffic violations bureau established pursuant to section three hundred seventy-one-a of the general municipal law where the violation occurred or, if there be none, by the court having jurisdiction over traffic infractions.

(h) If an owner receives a notice of liability pursuant to this section for any time period during which the 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 subdivision three of section three hundred eighty-six of this article pursuant to this section that the vehicle had been reported to the police as stolen prior to the time the violation occurred, had not been recovered by such time and such modifications described in subdivision three of section three hundred eighty-six of this article were made after such vehicle was stolen. For purposes of asserting the defense provided by this subdivision it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail to the court having jurisdiction.

(i) An owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to subdivision (f) of this section shall not be liable for the violation of subdivision three of section three hundred eighty-six 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 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 the violation of subdivision three of section three hundred eighty-six of this article pursuant to this section and shall be sent a notice of liability pursuant to subdivision (f) of this section.

(j) If the owner liable for a violation of subdivision three of section three hundred eighty-six 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.

(k) Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of subdivision three of section three hundred eighty-six of this article.

(l) All fines and penalties collected under this program shall be distributed in accordance with subdivision eleven of section eighteen hundred three of this chapter.

(m) The county of Westchester shall submit an annual report detailing the results of the use of such noise violation-monitoring system to the governor, the temporary president of the senate and the speaker of the assembly on or before June thirtieth, two thousand twenty-four 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 noise violation-monitoring systems were used;

2. the aggregate number, type and severity of accidents reported at intersections where a noise violation-monitoring system is used for the three years 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 noise violation-monitoring system is used for the reporting year, as well as for each year that the noise violation-monitoring system has been operational, to the extent the information is maintained by the department;

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

5. the number of notices of liability issued for violations recorded by such system at each intersection where a noise violation-monitoring system is used;

6. the number of fines imposed and total amount of fines paid after first notice of liability;

7. the number and percentage of violations adjudicated and results of such adjudications including breakdowns of disposition made for violations recorded by such systems which shall be provided at least annually to such county by the respective courts and bureaus conducting such adjudications;

8. the total amount of revenue realized by such county from such adjudications including a breakdown of revenue realized by such county for each year since deployment of its noise violation-monitoring system;

9. expenses incurred by such county in connection with the program;

10. quality of the adjudication process and its results which shall be provided at least annually to such county by the respective courts and bureaus conducting such adjudications; and

11. the public response to the use of such noise violation-monitoring systems.

(n) It shall be a defense to any prosecution for a violation of subdivision three of section three hundred eighty-six of this article pursuant to a local law or ordinance adopted pursuant to this section that such noise indications were malfunctioning at the time of the alleged violation.

(o) The county of Westchester shall post information on the county website and notify local media outlets indicating the zones in which the automated noise violation-monitoring systems have been installed.

(p) Law enforcement agencies within the county of Westchester shall install two signs facing opposite directions within two hundred feet, or otherwise consistent with the uniform manual on traffic control devices, where any noise violation-monitoring system is installed, which states "Noise Demonstration Program in Progress".

§ 2. Section 401 of the vehicle and traffic law is amended by adding a new subdivision 5-b to read as follows:

5-b. a. If at the time of application for a registration or renewal thereof there is a certification from a court or administrative tribunal of appropriate jurisdiction that the registrant or his or her representative failed to appear on the return date or any subsequent adjourned date or failed to comply with the rules and regulations of an administrative tribunal following entry of a final decision in response to

three or more summonses or other process, issued within an eighteen month period, charging either that the registrant was liable for any violation listed under paragraph a of subdivision five-a of this section, or the registrant was liable for a violation of subdivision three of section three hundred eighty-six of this chapter in accordance with this section, the commissioner or his or her agent shall deny the registration or renewal application until the applicant provides proof from the court or administrative tribunal wherein the charges are pending that an appearance or answer has been made or in the case of an administrative tribunal that he or she has complied with the rules and regulations of said tribunal following entry of a final decision. Where an application is denied pursuant to this section, the commissioner may, in his or her discretion, deny a registration or renewal application to any other person for the same vehicle and may deny a registration or renewal application for any other motor vehicle registered in the name of the applicant where the commissioner has determined that such registrant's intent has been to evade the purposes of this subdivision and where the commissioner has reasonable grounds to believe that such registration or renewal will have the effect of defeating the purposes of this subdivision. Such denial shall only remain in effect as long as the summonses remain unanswered, or in the case of an administrative tribunal, the registrant fails to comply with the rules and regulations following entry of a final decision.

b. The commissioner may promulgate such regulations as are necessary to effectuate the provisions of this subdivision, including provisions for the recovery of the administrative costs of the program incurred for each municipality. The commissioner may, in his or her discretion, refuse to process a certification received from a court or administrative tribunal in any municipality which has failed to comply with the provisions of section five hundred fourteen of this chapter or which does not have an effective program for enforcing suspension and revocation orders issued by the department.

§ 3. Section 1809 of the vehicle and traffic law is amended by adding a new subdivision 1-a to read as follows:

1-a. No mandatory surcharge shall be levied pursuant to this section for a conviction resulting from proceedings in an administrative tribunal or court of this state for a violation of subdivision three of section three hundred eighty-six of this chapter in accordance with section three hundred eighty-seven of this chapter.

§ 4. Section 1809-e of the vehicle and traffic law is amended by adding a new subdivision 1-a to read as follows:

1-a. No additional surcharge shall be levied pursuant to this section for a conviction resulting from proceedings in an administrative tribunal or court of this state for a violation of subdivision three of section three hundred eighty-six of this chapter in accordance with section three hundred eighty-seven of this chapter.

§ 5. The general municipal law is amended by adding a new section 371-a to read as follows:

§ 371-a. Jurisdiction and procedure; Westchester noise violation demonstration program. A traffic violations bureau so established may be authorized to dispose of violations of traffic laws, ordinances, rules and regulations when such offenses shall not constitute the traffic infraction known as speeding or a misdemeanor or felony, and, if authorized by local law or ordinance, or to adjudicate the liability of owners for violations of subdivision three of section three hundred eighty-six of the vehicle and traffic law in accordance with a local law or ordi-

nance imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with maximum noise requirements through the installation of noise violation-monitoring devices pursuant to section three hundred eighty-seven of the vehicle and traffic law.

§ 6. Section 1803 of the vehicle and traffic law is amended by adding two new subdivisions 3-a and 11 to read as follows:

3-a. All fines, penalties and forfeitures paid to a city, town or village pursuant to the provisions of paragraph a of subdivision one of this section and subdivision eleven of this section shall be credited to the general fund of such city, town or village, unless a different disposition is prescribed by charter, special law, local law or ordinance.

11. Notwithstanding the provisions of subdivision three of section ninety-nine-a of the state finance law, where the county of Westchester has established a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with subdivision three of section three hundred eighty-six of this chapter in accordance with section three hundred eighty-seven of this chapter, any fine or penalty collected by a court, judge, magistrate or other officer for an imposition of liability which occurs within a town or village within such county pursuant to such program shall be paid to the state comptroller within the first ten days of the month following collection. Every such payment shall be accompanied by a statement in such form and detail as the comptroller shall provide. The comptroller shall pay eighty percent of any such fine or penalty imposed for such liability to the county of Westchester, and twenty percent of any such fine or penalty to the town or village in which the violation giving rise to the liability occurred.

§ 7. 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 authority of section three hundred eighty-seven of the vehicle and traffic law.

§ 8. The purchase or lease of equipment for a demonstration program established pursuant to section 387 of the vehicle and traffic law shall be subject to the provisions of section 103 of the general municipal law.

§ 9. This act shall take effect immediately, and shall expire and be deemed repealed September 1, 2025.