

STATE OF NEW YORK

44

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to owner liability for failure of operator to move over when approaching a police, fire, or emergency vehicle

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 1144-b to read as follows:

3 § 1144-b. Owner liability for failure of operator to move over when
4 approaching a parked, stopped or standing authorized police, fire or
5 emergency vehicle. (a) 1. Notwithstanding any other provision of law,
6 the superintendent of the state police is hereby authorized to establish
7 a demonstration program imposing monetary liability on the owner of a
8 vehicle for failure of an operator thereof to comply with subdivision
9 (a) of section eleven hundred forty-four-a of this article when
10 approaching a state police vehicle equipped with a move over safety
11 monitoring system and operated in accordance with the provisions of this
12 section. Such demonstration program shall empower the superintendent of
13 the state police to install and operate a move over monitoring system on
14 any state police vehicle authorized by the superintendent.

15 2. Notwithstanding any other provision of law, a county, city, town or
16 village is hereby authorized to establish a demonstration program impos-
17 ing monetary liability on the owner of a vehicle for failure of an oper-
18 ator thereof to comply with subdivision (a) of section eleven hundred
19 forty-four-a of this article when approaching any police, fire or emer-
20 gency vehicle equipped with a move over safety monitoring system and
21 operated in accordance with the provisions of this section. Such demon-
22 stration program shall empower such county, city, town or village to
23 install and operate a move over safety monitoring system on any police

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

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1 vehicle, fire vehicle or emergency ambulance service vehicle, as defined
2 in this chapter that has been authorized by the county, city, town or
3 village.

4 3. Each move over safety monitoring system shall undergo an annual
5 calibration check performed by an independent calibration laboratory
6 which shall issue a signed certificate of calibration. The superinten-
7 dent of the state police or authorizing municipality shall keep such
8 annual certificate of calibration on file until the final resolution of
9 all cases involving a notice of liability issued during such year which
10 were based on photographs, microphotographs, videotape or other recorded
11 images produced by such move over monitoring system.

12 4. (i) Such demonstration program shall utilize necessary technologies
13 to ensure, to the extent practicable, that photographs, microphoto-
14 graphs, videotape or other recorded images produced by such move over
15 safety monitoring system shall not include images that identify the
16 driver, passenger, or the other contents of the vehicle. Provided,
17 however, that no notice of liability issued pursuant to this section
18 shall be dismissed solely because such photograph, microphotograph,
19 videotape or other recorded image allows for identification of the driv-
20 er, the passenger, or the contents of the vehicle where the superinten-
21 dent of the state police or the authorized municipality shows that
22 reasonable efforts were made to comply with the provisions of this para-
23 graph in such case.

24 (ii) Photographs, microphotographs, videotape or other recorded images
25 from a move over monitoring system shall be for the exclusive use of the
26 superintendent of the state police or authorized municipality for the
27 purpose of the adjudication of liability imposed pursuant to this
28 section and of the owner receiving a notice of liability pursuant to
29 this section, and shall be destroyed by the superintendent of the state
30 police or authorized municipality upon final resolution of the notice of
31 liability to which such photographs, microphotographs, videotape or
32 other recorded images relate, or one year following the date of issuance
33 of such notice of liability, whichever is later. Notwithstanding the
34 provisions of any other law, rule or regulation to the contrary, photo-
35 graphs, microphotographs, videotape or any other recorded image from a
36 move over monitoring system shall not be open to the public nor subject
37 to civil or criminal process or discovery, nor used by any court or
38 administrative or adjudicatory body in any action or proceeding therein
39 except that which is necessary for the adjudication of a notice of
40 liability issued pursuant to this section, and no public entity or
41 employee, officer or agent thereof shall disclose such information,
42 except that such photographs, microphotographs, videotape or any other
43 recorded images from such system:

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

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

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

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

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

21 (b) If the superintendent of the state police or authorized munici-
22 pality establishes a demonstration program pursuant to subdivision (a)
23 of this section, the owner of a vehicle shall be liable for a penalty
24 imposed pursuant to subdivision (e) of this section if such vehicle was
25 used or operated with the permission of the owner, express or implied,
26 in violation of subdivision (a) of section eleven hundred forty-four-a
27 of this article or such vehicle was unable to move over as required by
28 section eleven hundred forty-four-a of this article and traveling at a
29 speed of more than five miles per hour above the posted speed limit when
30 passing an authorized state police, police, fire or emergency ambulance
31 service vehicle and such violation is evidenced by information obtained
32 from a move over monitoring system; provided however that no owner of a
33 vehicle shall be liable for a penalty imposed pursuant to subdivision
34 (e) of this section where the operator of such vehicle has been
35 convicted of the underlying violation of subdivision (b), (c), (d), (f),
36 or (g) of section eleven hundred eighty of this title.

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

39 1. "Move over safety monitoring system" shall mean a recording device
40 placed on any authorized vehicle, pursuant to paragraphs one and two of
41 subdivision (a) of this section, that is designed to capture a recorded
42 video or images of a motor vehicle committing a violation, under subdi-
43 vision (a) of section eleven hundred forty-four-a of this article, using
44 (i) video or another visual recording; (ii) certified radar, lidar, or
45 another speed measuring device; or (iii) a computer or recording system.

46 2. "Owner" shall have the meaning as defined in article two-B of this
47 chapter.

48 3. "Recorded image" shall mean images recorded by a move over safety
49 monitoring system on (i) one or more photographs; (ii) one or more
50 microphotographs; (iii) one or more electronic images; (iv) video; or
51 (v) any other medium; and such recorded images show a motor vehicle and,
52 on at least one image or portion of tape, clearly identify the registra-
53 tion plate number of the motor vehicle.

54 4. "Authorized municipality" shall mean a county, city, town or
55 village which has established a demonstration program pursuant to the
56 provisions of paragraphs one and two of subdivision (a) of this section.

1 5. "Authorized vehicle" shall mean any state police vehicle authorized
2 by the superintendent to operate a move over monitoring system or any
3 police, fire or emergency ambulance vehicle authorized by a county,
4 city, town or village to operate a move over monitoring system.

5 (d) 1. A certificate, sworn to or affirmed by a technician employed by
6 the division of state police or the local law enforcement agency of an
7 authorized municipality, or a facsimile thereof, based upon inspection
8 of photographs, microphotographs, videotapes or other recorded images
9 produced by a move over monitoring system, shall be prima facie evidence
10 of the facts contained therein. Any photographs, microphotographs, vide-
11 otape or other recorded images evidencing such violation shall include:

12 (i) an image of at least one of the motor vehicle's registration
13 plates;

14 (ii) images containing the stamped date and time and location at which
15 the violation occurred; and

16 (iii) the speed at which the vehicle was traveling and the distance of
17 the vehicle from the authorized vehicle.

18 2. Such recorded images shall be available for inspection reasonably
19 in advance of and at any proceeding to adjudicate the liability for such
20 violation pursuant to this section.

21 (e) An owner liable for a violation of section eleven hundred forty-
22 four-a of this article pursuant to a demonstration program established
23 pursuant to this section shall be liable for monetary penalties in
24 accordance with a schedule of fines and penalties to be set forth in
25 such local law or ordinance, except that if a city by local law has
26 authorized the adjudication of such owner liability by a parking
27 violations bureau, such schedule shall be promulgated by such bureau.
28 The liability of the owner pursuant to this section shall be one hundred
29 fifty dollars for each violation; provided however, that such local law
30 or ordinance may provide for an additional penalty not in excess of
31 twenty-five dollars for each violation for the failure to respond to
32 notice of liability within the prescribed time period.

33 (f) An imposition of liability under the demonstration program estab-
34 lished pursuant to this section shall not be deemed a conviction as an
35 operator and shall not be made part of the operating record of the
36 person whom such liability is imposed nor shall it be used for insurance
37 purposes in the provision of motor vehicle coverage.

38 (g) 1. A notice of liability shall be sent by first class mail to each
39 person alleged to be liable as an owner for a violation of section elev-
40 en hundred forty-four-a of this article pursuant to this section, within
41 fourteen business days if such owner is a resident of this state and
42 within forty-five business days if such owner is a non-resident.
43 Personal delivery on the owner shall not be required. A manual or auto-
44 matic record of mailing prepared in the ordinary course of business
45 shall be prima facie evidence of the facts contained therein.

46 2. A notice of liability shall contain the name and address of the
47 person alleged to be liable as an owner for violation of section eleven
48 hundred forty-four-a of this article pursuant to this section, the
49 registration number of the vehicle involved in such violation, the
50 location where such violation took place, the date and time of such
51 violation, the identification number of the camera which recorded the
52 violation or other document locator number, images containing the
53 stamped date and time and location at which the violation occurred, and
54 the speed at which the vehicle was traveling and the distance of the
55 vehicle from the authorized vehicle.

1 3. The notice of liability shall contain information advising the
2 person charged of the manner and the time in which he or she may contest
3 the liability alleged in the notice. Such notice of liability shall also
4 contain a prominent warning to advise the person charged that failure to
5 contest in the manner and time provided shall be deemed an admission of
6 liability and that default judgment may be entered thereon.

7 4. The notice of liability shall be prepared and mailed by the divi-
8 sion of the state police or authorized municipality, or by any other
9 entity authorized by the superintendent of state police or authorized
10 municipality to prepare and mail such notice of liability.

11 (h) Adjudication of the liability imposed upon owners by this section
12 shall be by a traffic violations bureau established pursuant to section
13 three hundred seventy of the general municipal law where the violation
14 occurred or, if there be none, by the court having jurisdiction over
15 traffic infractions where the violation occurred, except that if a city
16 has established an administrative tribunal to hear and determine
17 complaints of traffic infractions constituting parking, standing, or
18 stopping violations such city may, by local law, authorize such adjudi-
19 cation by such tribunal.

20 (i) If an owner receives notice of liability pursuant to this section
21 for any time period during which the vehicle or the number plate or
22 plates of such vehicle was reported to the police department as having
23 been stolen, it shall be a valid defense to an allegation of liability
24 for a violation of section eleven hundred forty-four-a of this article
25 pursuant to this section that the vehicle or the number plate or plates
26 of such vehicle had been reported to the police as stolen prior to the
27 time the violation occurred and had not been recovered by such time. For
28 purposes of asserting the defense provided by this subdivision, it shall
29 be sufficient that a certified copy of the police report on the stolen
30 vehicle or number plate or plates of such vehicle be sent by first class
31 mail to traffic violations bureau, the court having jurisdiction or the
32 parking violations bureau or to any entity authorized by the superinten-
33 dent of state police or authorized municipality to prepare and mail such
34 notice of liability.

35 (j) 1. An owner who is a lessor of a vehicle to which a notice of
36 liability was issued pursuant to subdivision (g) of this section shall
37 not be liable for the violation under section eleven hundred
38 forty-four-a of this article pursuant to this section, provided that:

39 (i) prior to the violation, the lessor has filed with such traffic
40 violations bureau, court having jurisdiction or the parking violations
41 bureau in accordance with the provisions of section two hundred thirty-
42 nine of this chapter; and

43 (ii) within thirty-seven days after receiving notice from such divi-
44 sion of the date and time of a liability, together with the other infor-
45 mation contained in the original notice of liability, the lessor submits
46 to such traffic violations bureau, court having jurisdiction or the
47 parking violations bureau the correct name and address of the lessee of
48 the vehicle identified in the notice of liability at the time of such
49 violation, together with such other additional information contained in
50 the rental, lease or other contract document, as may be reasonably
51 required by such traffic violations bureau, court having jurisdiction or
52 the parking violations bureau pursuant to regulations that may be
53 promulgated for such purpose.

54 2. Failure to comply with subparagraph (ii) of paragraph one of this
55 subdivision shall render the owner liable for the penalty prescribed in
56 subdivision (e) of this section.

1 3. Where the lessor complies with the provisions of paragraph one of
2 this subdivision, the lessee of such vehicle on the date of such
3 violation shall be deemed to be the owner of such vehicle for the
4 purposes of this section, shall be subject to liability for such
5 violation pursuant to this section and shall be sent a notice of liabil-
6 ity pursuant to subdivision (i) of this section.

7 (k) 1. If the owner liable for a violation of section eleven hundred
8 forty-four-a of this article pursuant to this section was not the opera-
9 tor of the vehicle at the time of the violation, the owner may maintain
10 an action for indemnification against the operator.

11 2. Notwithstanding any other provision of this section, no owner of a
12 vehicle shall be subject to a monetary fine imposed pursuant to this
13 section if the operator of such vehicle was operating such vehicle with-
14 out the consent of the owner at the time such operator operated such
15 vehicle in violation of section eleven hundred forty-four-a of this
16 article. For purposes of this subdivision there shall be a presumption
17 that the operator of such vehicle was operating such vehicle with the
18 consent of the owner at the time of such operator operated such vehicle
19 in violation of section eleven hundred forty-four-a of this article.

20 (l) Nothing in this section shall be construed to limit the liability
21 of an operator of a vehicle for any violation of section eleven hundred
22 forty-four-a of this article.

23 (m) If the superintendent of the state police or authorized munici-
24 pality adopts a demonstration program pursuant to subdivision (a) of
25 this section such superintendent or authorized municipality shall
26 conduct a study and submit a report on the results of the use of a move
27 over monitoring system to the governor, the temporary president of the
28 senate and the speaker of the assembly. Such report shall include, but
29 shall not be limited to:

30 1. the locations where and dates when move over monitoring systems
31 were used;

32 2. the aggregate number of violations;

33 3. the number of violations recorded in aggregate on a daily, weekly
34 and monthly basis;

35 4. the total number of notices of liability issued for violations
36 recorded by such system;

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

39 6. the number of violations adjudicated and the result of such adjudi-
40 cations including breakdowns of dispositions made for violations
41 recorded by such systems;

42 7. the total amount of revenue realized by the state or municipality
43 in connection with the program; and

44 8. expenses incurred by the division of state police or authorized
45 municipality in connection with the program.

46 § 2. This act shall take effect January 1, 2022.