STATE OF NEW YORK

1398--A

2021-2022 Regular Sessions

IN SENATE

January 11, 2021

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- recommitted to the Committee on Transportation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law, in relation to the establishment in the city of New York of a bicycle lane safety program; 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 1111-g to read as follows:

§ 1111-g. Owner liability for failure of operator to comply with bicycle lane restrictions. (a) 1. Notwithstanding any other provision of law, the city of New York is hereby authorized and empowered to establish a bicycle lane safety program imposing monetary liability on the owner of a motor vehicle for failure of an operator thereof to comply with bicycle lane restrictions in such city in accordance with the provisions of this section. The New York city department of transportation, for purposes of the implementation of such program, shall install and operate bicycle lane photo devices on, within or in close proximity to protected bicycle lanes. Bicycle lane photo devices may be activated at locations as determined by such department of transportation; provided, however, that there shall be no more than fifty bicycle lane photo devices located within such city.

2. The city of New York shall adopt and enforce measures to protect the privacy of drivers, passengers, pedestrians and cyclists whose identity and identifying information may be captured by a bicycle lane photo device. Such measures shall include:

(i) utilization of necessary technologies to ensure, to the extent practicable, that images produced by a bicycle lane photo device shall

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

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not include images that identify the driver, the passengers, or the contents of the motor vehicle, provided, however, that no notice of liability issued pursuant to this section shall be dismissed solely because an image allows for the identification of the driver, the passengers or other contents of a motor vehicle;

(ii) a prohibition on the use or dissemination of motor vehicles' license plate information and other information and images captured by a bicycle lane photo device except: (A) as required to establish liability under this section or collect payment of penalties; (B) as required by court order; or (C) as otherwise required by law;

(iii) the installation of signage at regular intervals within protected bicycle lanes stating that bicycle lane photo devices are used to enforce restrictions on vehicular traffic in such bicycle lanes; and

(iv) oversight procedures to ensure compliance with the aforementioned privacy protection measures.

3. Bicycle lane photo devices shall only be operated on, within or in close proximity to protected bicycle lanes. Warning notices of violation will be issued during the first sixty days that bicycle lane photo devices are operated on, within or in close proximity to each protected bicycle lane in the bicycle lane safety program.

(b) If the city of New York has established a bicycle lane safety program pursuant to subdivision (a) of this section, the owner of a motor vehicle shall be liable for a penalty imposed pursuant to this section if such motor vehicle was used or operated with the permission of the owner, express or implied, in violation of any bicycle lane restrictions that apply to protected bicycle lanes within such program, and such violation is evidenced by information obtained from a bicycle lane photo device; provided, however, that no owner of a motor vehicle shall be liable for a penalty imposed pursuant to this section where the operator of such motor vehicle has been convicted of the underlying violation of any bicycle lane restrictions.

(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. "bicycle lane" shall have the meaning provided in article one of this chapter.

3. "bicycle lane photo device" shall mean a device that is capable of operating independently of an enforcement officer and produces one or more images of each motor vehicle at the time it is in violation of any bicycle lane restriction.

4. "bicycle lane restriction" shall mean a restriction on the use of a designated traffic lane by motor vehicles other than bicycles imposed on any roadway or bicycle lane by local law and signs erected by the New York city department of transportation.

5. "bicycle lane safety program" shall mean any roadway designated by the New York city department of transportation that operates on or adjacent to any protected bicycle lane and that may include upgraded signage, enhanced road markings, traffic signal priority for bicycles, and any other enhancement that increases the safety of cyclists.

6. "protected bicycle lane" shall mean a bicycle lane that is designated for the exclusive use of bicycles and is designated as part of the bicycle lane safety program as determined by the New York city department of transportation. Protected bicycle lane shall include any bicycle lane which is physically separated from the roadway by curbing, bollards, or other other barrier.

(d) A certificate, sworn to or affirmed by a technician employed by the city of New York in which the charged violation occurred, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a bicycle lane photo device, 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 this section.

(e) An owner liable for a violation of a bicycle lane restriction imposed on any roadway within the bicycle lane safety program shall be liable for monetary penalties in accordance with a schedule of fines and penalties promulgated by the parking violations bureau of the city of New York; provided, however, that the monetary penalty for violating a bicycle lane restriction shall not exceed fifty dollars; provided, further, that an owner shall be liable for an additional penalty not to exceed twenty-five dollars for each violation for the failure to respond to a notice of liability within the prescribed time period.

(f) An imposition of liability pursuant to this section shall not be deemed a conviction of 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 a bicycle lane restriction. Personal delivery to 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 a bicycle lane restriction, the registration number of the motor vehicle involved in such violation, the location where such violation took place including the street address or cross streets, one or more images identifying the violation, the date and time of such violation and the identification number of the bicycle lane photo device 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 agency or agencies designated by the city of New York, or any other entity authorized by such city to prepare and mail such notification of violation.

5. Adjudication of the liability imposed upon owners by this section shall be by the New York city parking violations bureau.

(h) If an owner of a motor vehicle receives a notice of liability pursuant to this section for any time period during which such motor 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 a bicycle lane restriction that the motor 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 subdivision it shall be sufficient that a certified copy of the police report on the stolen motor vehicle be sent by first class mail to the New York city parking violations bureau.

(i) 1. An owner who is a lessor of a motor vehicle to which a notice of liability was issued pursuant to subdivision (g) of this section shall not be liable for the violation of a bicycle lane restriction, provided that:

(i) prior to the violation, the lessor has filed with such parking violations bureau in accordance with the provisions of section two hundred thirty-nine of this chapter, and

(ii) within thirty-seven days after receiving notice from such bureau of the date and time of a liability, together with the other information contained in the original notice of liability, the lessor submits to such bureau the correct name and address of the lessee of the motor 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 such bureau pursuant to regulations that may be promulgated for such purpose.

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

3. Where the lessor complies with the provisions of paragraph one of this subdivision, the lessee of such motor vehicle on the date of such violation shall be deemed to be the owner of such motor 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.

(j) If the owner liable for a violation of a bicycle lane restriction was not the operator of the motor 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 motor vehicle for any violation of bicycle lane restrictions.

(l) If the city of New York adopts a bicycle lane safety program pursuant to subdivision (a) of this section, it shall submit a report on the results of the use of bicycle lane photo devices to the governor, the temporary president of the senate and the speaker of the assembly within two years of the adoption of such bicycle lane safety program and every two years thereafter. Such report shall include, but not be limited to:

1. a description of the locations where bicycle lane photo devices were used;

2. the total number of violations recorded on a monthly and annual basis;

3. the total number of notices of liability issued;

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

5. the number of violations adjudicated and results of such adjudications including breakdowns of dispositions made;

6. the total amount of revenue realized by the city of New York;

7. the quality of the adjudication process and its results;

8. the total number of bicycle lane photo devices by type of device;

9. the total cost to the city of New York; and

10. a detailed report on the number accidents involving cyclists in protected bicycle lanes before and after implementation of the bicycle lane safety program, including current statistics.

(m) Any revenue from fines and penalties collected pursuant to this section from a bicycle lane photo device that was authorized to be installed and used pursuant to this section shall be remitted by the city of New York to the New York city department of transportation on a quarterly basis to be deposited in the general transportation account of the New York city transportation assistance fund established pursuant to section twelve hundred seventy-i of the public authorities law.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law and shall expire 5 years after such date when upon such date the provisions of this act shall be deemed repealed. Effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made on or before such date.