STATE OF NEW YORK

2699

2023-2024 Regular Sessions

IN ASSEMBLY

January 26, 2023

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

AN ACT to amend the vehicle and traffic law, in relation to establishing a school speed zone camera demonstration program in the village of Old Westbury

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 1180-f to read as follows:

§ 1180-f. Owner liability for failure of operator to comply with certain posted maximum speed limits; village of Old Westbury. (a) Definitions. For purposes of this section, the following terms shall have the following meanings:

1. "Hearing examiner" shall mean the adjudicator of an administrative tribunal established to adjudicate the liability of owners of vehicles captured by a speed camera system violating the speed limit in a school speed zone during a student activity period or a town or village court judge adjudicating such liability.

2. "Image" shall mean photographs, microphotographs, videotape, or other recorded image produced by a speed camera system.

3. "Manual on uniform traffic control devices" or "MUTCD" shall mean the manual and specifications for a uniform system of traffic control devices maintained by the commissioner of transportation pursuant to section sixteen hundred eighty of this chapter.

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

5. "Speed camera system" shall mean a vehicle sensor installed to work in conjunction with a speed measuring device 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 a school speed zone in violation of subdivision (b), (c), (d), (f) or

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

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(g) of section eleven hundred eighty of this article in accordance with the provisions of this section.

6. "School speed zone" shall mean a distance not to exceed one thousand three hundred twenty feet on a highway passing a school building, entrance or exit of a school abutting on the highway.

7. "Student activity period" shall mean (i) on school days during school hours and one hour before and one hour after the school day; and (ii) during periods of student activities at the school and up to thirty minutes immediately before and up to thirty minutes immediately after such student activities.

8. "The village" shall mean the village of Old Westbury.

(b) Speed camera demonstration program. 1. Notwithstanding any other provision of law, the village is hereby authorized to establish a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with posted speed limits in a school zone within the village during student activity periods. Such demonstration program shall empower the village to install and operate speed camera systems within no more than nine school speed zones at any one time. In selecting a school speed zone in which to install and operate a speed camera system, the village shall consider criteria including, but not limited to the speed data, crash history, and the roadway geometry applicable to such school speed zone.

(c) Program requirements. 1. No speed camera system shall be used in a school speed zone 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.

2. Prior to operating the speed camera system, the village shall install warning signs of the camera use in such school speed zone. Such signs shall comply with manual on uniform traffic control devices.

3. Operators of speed camera systems shall have completed training in the procedures for setting up, testing, and operating such systems. Each such operator shall complete and sign a daily set-up log 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. The village shall retain each such daily log until the later of the date on which such system has been permanently removed or the final resolution of all cases involving such system.

4. Each speed camera system shall undergo an annual calibration check performed by an independent calibration laboratory which shall issue a signed certificate of calibration. The village shall keep each such annual certificate of calibration on file until the final resolution of all cases involving such system.

5. (i) Images from a speed camera system shall be for the exclusive purpose of the adjudication of liability imposed pursuant to this section and shall be destroyed by the village upon the final resolution of liability to which such images relate, or one year following the date of issuance of a notice of liability, whichever is later.

(ii) Notwithstanding the provisions of any other law, rule or regulation to the contrary, images from a speed camera system shall not be available to the public, subject to civil or criminal process or discovery, used in any judicial or administrative action or proceeding other than in accordance with this section, subject to freedom of information laws, provided that the village shall disclose such images:

(A) to the defendant in any speed zone violation proceeding;

(B) in response to a search warrant issued pursuant to the criminal procedure law or federal law that states that there is reasonable cause to believe such images constitute evidence of a misdemeanor or felony offense; and

(C) in response to a subpoena duces tecum signed by a judge pursuant to the criminal procedure law or federal law where 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.

(d) Fines for violations. (i) An owner or operator who violates the speed limit in a school speed zone during a student activity period and such violation is captured by a speed camera system shall be liable for a fine pursuant to a schedule promulgated by the village, not to exceed fifty dollars for each violation and an additional penalty not to exceed twenty-five dollars for each failure to respond timely to a notice of liability.

(ii) No owner shall be liable for such fine where:

(A) the operator of such vehicle has been convicted of the underlying violation;

(B) the vehicle or the license plate of such vehicle was stolen at the time of the violation;

(C) the owner of such vehicle establishes by a preponderance of the evidence that such owner was not driving the vehicle at the time of the violation;

(D) the owner of such vehicle leases such vehicle to a third party, provided that such owner notifies the village, within thirty-seven days after receiving notice of liability, of the name and address of the lessee of such vehicle. Thereafter, the lessee of such vehicle shall be deemed to be the owner of such vehicle for the purposes of this section; or

(E) the owner establishes that such camera system was malfunctioning at the time of the alleged violation. The village shall upon request make such camera available to the owner for a calibration analysis performed by an independent entity. The reasonable cost of complying with such a request, not to exceed the actual cost thereof, shall be paid by the owner.

(iii) A fine imposed based on the speed camera system shall not be deemed a speeding conviction, made part of the operating record of such person, or considered in determining motor vehicle insurance premiums.

(iv) Notwithstanding section eighteen hundred nine of this chapter, there shall be no surcharge levied for an adjudication of liability under this section.

(e) Procedure for enforcement; tribunal. 1. The village, or an entity authorized by the village, shall prepare and send by first class mail a notice of liability to each owner of a vehicle captured by a speed camera system violating the speed limit in a school speed zone during a student activity period, 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 ordinary course of business shall be prima facie evidence of such mailing.

The notice of liability shall:

(i) contain the name and address of the owner, the registration number of the vehicle, the location of the violation, the date and time of such violation, the identification number of the camera or other document

locator number, at least two date and time stamped images of the vehicle that include the same stationary object;

(ii) include a certificate sworn to or affirmed by a technician employed by the village, based upon inspection of images produced by the speed camera system, documenting the alleged violation. Such certificate shall be prima facie evidence of the facts contained therein;

(iii) advise the owner of the manner and the time in which he or she may contest liability; and

(iv) contain a prominent warning that failure to contest liability shall be deemed an admission of liability and that a default judgment may be entered thereon.

2. (i) Notwithstanding any inconsistent provision of law, the village is authorized either:

(A) to establish an administrative tribunal to adjudicate the liability of owners of vehicles captured by a speed camera system violating the speed limit in a school speed zone during a student activity period; or

(B) to designate such process to a local village or town court subject to the rules established by this paragraph.

(ii) The village shall not issue any notice of fine or penalty prior to the date of the hearing where liability is being contested by a person.

(iii) Every hearing shall be held before a hearing examiner in accordance with rules and regulations promulgated by the village.

(iv) The hearing examiner shall not be bound by the rules of evidence, except rules relating to privileged communications.

(v) No liability may be established except upon proof by substantial evidence.

(vi) The hearing examiner shall, upon a showing of good cause by the defendant, issue a subpoena compelling the attendance of the speed camera systems operator who signed the daily set-up log for such system, and a subpoena duces tecum for any document or record relevant to the charges.

(vii) The hearing examiner shall not consider any record of any prior violations.

(viii) A record shall be made of each hearing; recording devices may be used for the making of the record.

(ix) The hearing examiner shall make a determination on the charges. Final determinations shall be entered on a roll maintained by the village together with records showing payment and nonpayment of penalties.

(x) A judgment entered pursuant to the provisions of this section shall remain in full force and effect for eight years.

3. Where an owner fails to contest liability or fails to appear on a designated hearing date or subsequent adjourned date, such failure to contest or appear shall be deemed, for all purposes, an admission of liability and shall be grounds for rendering and entering a default judgment in an amount provided by the rules and regulations of the village.

(f) Study and report. If the village adopts a demonstration program pursuant to subdivision (a) of this section, it shall conduct a study and submit a report to the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, and the minority leader of the assembly on January first of each year. Such report shall include:

1. the locations where and dates when speed camera systems were used;

2. a comparison of the aggregate number, type and severity of crashes, fatalities, injuries and property damage reported within all school speed zones and within the village and within school speed zones where speed camera systems were used within the village, to the extent the information is maintained by the department of motor vehicles of this state;

3. a comparison of the number of violations recorded within all school speed zones within the village and school speed zone where a speed camera system was used within the village, in the aggregate on a daily, weekly and monthly basis where the vehicle exceeded the posted speed limit by:

(i) less than ten miles per hour;

(ii) more than ten but not more than twenty miles per hour;

(iii) more than twenty but not more than thirty miles per hour; and

(iv) more than thirty miles per hour;

4. the total number of notices of liability issued for violations recorded by such systems;

5. the number of fines and total amount of fines paid for violations recorded by such systems; and

6. the total amount of revenue realized by the village in connection with the program.

§ 2. This act shall take effect immediately; provided, however, that the authorization for the demonstration program shall be suspended immediately in the event that the report required under subdivision (f) of section 1180-f of the vehicle and traffic law is not submitted on or before January 1 of each year, pending the submission of such report; and provided, further, that the village of Old Westbury shall notify the legislative bill drafting commission upon the occurrence of the submission of such report, in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.