STATE OF NEW YORK

7043

2023-2024 Regular Sessions

IN ASSEMBLY

May 10, 2023

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

AN ACT to amend the vehicle and traffic law and the public officers law, in relation to establishing a school speed zone camera demonstration program in the city of Albany; 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 1180-f to read as follows:

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

1. "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;

2. "owner" shall have the meaning provided in article two-B of this chapter;

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

4. "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; and

5. "the city" means the city of Albany.

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

LBD10033-01-3

(b) Speed camera demonstration program. 1. Notwithstanding any other provision of law, the city of Albany 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 maximum speed limits in a school speed zone within the city: (i) when a school speed limit is in effect as provided in paragraphs one and two of subdivision (c) of section eleven hundred eighty of this article; or (ii) when other speed limits are in effect as provided in subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article during the following times: (A) on school days during school hours and one hour before and one hour after the school day, and (B) a period during student activities at the school and up to thirty minutes immediately before and up to thirty minutes immediately after such student activities.

2. Such demonstration program shall empower the city to install speed camera systems within no more than twenty school speed zones within the city at any one time and to operate such systems within such zones. In selecting a school speed zone in which to install and operate a speed camera system, the city shall consider criteria including, but not limited to the speed data, crash history, and the roadway geometry applicable to such school speed zone.

3. No speed camera system shall be used in a school speed zone unless (i) on the day such speed camera system is to be used such speed camera system has successfully passed a self-test of such speed camera system's functions; and (ii) such speed camera system has undergone an annual calibration check performed pursuant to paragraph five of this subdivision. The city shall install signs giving notice that a speed camera system is in use to be mounted on advance warning signs notifying motor vehicle operators of such upcoming school speed zone and/or on speed limit signs applicable within such school speed zone, in conformance with standards established in the MUTCD.

4. 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 he or she operates that (i) states the date and time when, and the location where, such speed camera system was set up such day, and (ii) states that such operator successfully performed, and such speed camera system passed, the self-tests of such speed camera system before producing a recorded image such day. The city shall retain each such daily log until the later of the date on which the speed camera system to which it applies has been permanently removed from use or the final resolution of all cases involving notices of liability issued based on photographs, microphotographs, videotape or other recorded images produced by such speed camera system.

5. 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 city shall keep each such annual certificate of calibration on file until the final resolution of all cases involving a notice of liability issued during such year which were based on photographs, microphotographs, videotape or other recorded images produced by such speed camera system.

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 speed camera 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 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 paragraph in such case.

(ii) Photographs, microphotographs, videotape or any other recorded images from a speed camera system shall be for the exclusive use of the city for the purpose of the adjudication of liability imposed pursuant to this section and of the owner receiving a notice of liability pursuant to this section, and shall be destroyed by the city upon the final resolution of the notice of liability to which such photographs, microphotographs, videotape or other recorded images relate, or one year following the date of issuance of such notice of liability, 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 speed camera system shall not be open 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 liability issued pursuant to this section, 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; and

(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.

(c) Vehicle owner liability. 1. If the city of Albany establishes a demonstration program pursuant to subdivision (b) 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, within a school speed zone in violation of subdivision (b) of this section or during the times authorized pursuant to paragraph 1 of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article, such vehicle was traveling at a speed of more than ten miles per hour above the posted speed limit in effect within such school speed zone, and such violation is evidenced by information obtained from a speed camera system; provided however that no owner of a vehicle shall be liable for a penalty imposed pursuant to this section where the operator of such vehicle has been convicted of the underlying violation of subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty of this article.

2. Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of subdivision (c) or (d) of section eleven hundred eighty of this article.

(d) Evidence of violation. A certificate, sworn to or affirmed by a technician employed by the city of Albany, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a speed camera system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, 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 this section.

(e) Fines for violations. An owner liable for a violation of subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to a demonstration program established pursuant to this section shall be liable for monetary penalties in accordance with a schedule of fines and penalties to be promulgated by the parking violations bureau of the city of Albany. The liability of the owner pursuant to this section shall not exceed fifty dollars for each violation; provided, however, that such parking violations bureau 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) Record and insurance. An imposition of liability under the demonstration program established pursuant to this section shall not be deemed a conviction as 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) Procedure for enforcement. 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 (b), (c), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section, 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 of this state. 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 (b), (c), (d), (f) or (g) of section eleven hundred eighty 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, 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 liability.

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 prominent 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 city of Albany, or by any other entity authorized by the city to prepare and mail such notice of liability.

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

(h) Defenses. 1. If an owner receives a notice of liability 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 subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section 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 subdivision, 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 city of Albany parking violations bureau or by any other entity authorized by the city to prepare and mail such notice of liability.

2. It shall be a defense to any prosecution for a violation of subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section that such speed camera system was malfunctioning at the time of the alleged violation.

(i) Leased vehicles. 1. An owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to subdivision (g) of this section shall not be liable for the violation of subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section, 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 division 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 division the correct name and address of the lessee of the 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

division 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 owner 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 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 liability pursuant to this subdivision.

(j) Indemnification. 1. If the owner liable for a violation of subdivision (c) or (d) of section eleven hundred eighty 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.

2. Notwithstanding any other provision of this section, no owner of a vehicle shall be subject to a monetary fine imposed pursuant to this section if the operator of such vehicle was operating such vehicle without the consent of the owner at the time such operator operated such vehicle in violation of subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty of this article. For purposes of this subdivision there shall be a presumption that the operator of such vehicle was operating such vehicle with the consent of the owner at the time such operator operated such vehicle in violation of subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty of this article.

(k) Study and report. If the city adopts a demonstration program pursuant to subdivision (b) of this section it shall conduct a study and submit a report on the results of the use of speed camera systems to the governor, the temporary president of the senate, and the speaker of the assembly on January first of each year. Such report shall include:

1. the locations and dates upon which speed camera systems were used;

2. the aggregate number, type and severity of crashes, fatalities, injuries and property damage reported within all school speed zones within the city, to the extent such information is maintained by the department of motor vehicles of this state;

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

4. the number of violations recorded within all school speed zones within the city, in the aggregate on a daily, weekly and monthly basis;

5. the number of violations recorded within each school speed zone where a speed camera system is used, in the aggregate on a daily, weekly and monthly basis;

6. the number of violations recorded within all school speed zones within the city that were:

(i) more than ten but not more than twenty miles per hour over the posted speed limit;

(ii) more than twenty but not more than thirty miles per hour over the posted speed limit;

(iii) more than thirty but not more than forty miles per hour over the posted speed limit; and

(iv) more than forty miles per hour over the posted speed limit;

7. the number of violations recorded within each school speed zone where a speed camera system is used that were:

(i) more than ten but not more than twenty miles per hour over the posted speed limit;

(ii) more than twenty but not more than thirty miles per hour over the posted speed limit;

(iii) more than thirty but not more than forty miles per hour over the posted speed limit; and

(iv) more than forty miles per hour over the posted speed limit;

8. the total number of notices of liability issued for violations recorded by such speed camera systems;

9. the number of fines and total amount of fines paid after the first notice of liability issued for violations recorded by such speed camera systems;

10. the number of violations adjudicated and the results of such adjudications including breakdowns of dispositions made for violations recorded by such speed camera systems;

11. the total amount of revenue realized by the city in connection with the demonstration program under this section;

12. the expenses incurred by the city in connection with the demonstration program under this section; and

13. the quality of the adjudication process pursuant to this section and its results.

§ 2. Section 237 of the vehicle and traffic law is amended by adding a new subdivision 17 to read as follows:

17. To adjudicate the liability of owners for violations of subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty of this chapter in accordance with section eleven hundred eighty-f of this chapter.

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

(s) are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-f of the vehicle and traffic law.

§ 4. This act shall take effect immediately and shall expire 5 years after such effective date when upon such date the provisions of this act shall be deemed repealed; provided, however, that the authorization for the demonstration project shall be suspended immediately in the event that the report required under subdivision (k) of section 1180-f of the vehicle and traffic law is not submitted on or before April 1 of each year, pending the submission of such report; and provided, further, that the city of Albany 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.