

STATE OF NEW YORK

7043--A

2023-2024 Regular Sessions

IN ASSEMBLY

May 10, 2023

Introduced by M. of A. FAHY -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. The vehicle and traffic law is amended by adding a new
2 section 1180-f to read as follows:

3 § 1180-f. Owner liability for failure of operator to comply with
4 certain posted maximum speed limits. (a) 1. Notwithstanding any other
5 provision of law, the city of Albany is hereby authorized to establish a
6 demonstration program imposing monetary liability on the owner of a
7 vehicle for failure of an operator thereof to comply with posted maximum
8 speed limits in a school speed zone within such city (i) when a school
9 speed limit is in effect as provided in paragraphs one and two of subdi-
10 vision (c) of section eleven hundred eighty of this article or (ii) when
11 other speed limits are in effect as provided in subdivision (b), (d),
12 (f) or (g) of section eleven hundred eighty of this article during the
13 following times: (A) on school days during school hours and one hour
14 before and one hour after the school day, and (B) a period during
15 student activities at the school and up to thirty minutes immediately
16 before and up to thirty minutes immediately after such student activ-
17 ities. Such demonstration program shall empower the city of Albany to
18 install photo speed violation monitoring systems within no more than
19 twenty school speed zones within such city at any one time and to oper-
20 ate such systems within such zones (iii) when a school speed limit is in
21 effect as provided in paragraphs one and two of subdivision (c) of
22 section eleven hundred eighty of this article or (iv) when other speed

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

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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. In selecting a school speed zone in which to install and operate a photo speed violation monitoring 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.

2. No photo speed violation monitoring 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. The city shall install signs giving notice that a photo speed violation monitoring 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.

3. Operators of photo speed violation monitoring 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, 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 before producing a recorded image that day. The city shall retain each such daily log until the later of the date on which the photo speed violation monitoring 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 system.

4. Each photo speed violation monitoring 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 photo speed violation monitoring system.

5. (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 photo speed 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 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 image from a photo speed violation monitoring 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

1 city upon the final resolution of the notice of liability to which such
2 photographs, microphotographs, videotape or other recorded images
3 relate, or one year following the date of issuance of such notice of
4 liability, whichever is later. Notwithstanding the provisions of any
5 other law, rule or regulation to the contrary, photographs, microphoto-
6 graphs, videotape or any other recorded image from a photo speed
7 violation monitoring system shall not be open to the public, nor subject
8 to civil or criminal process or discovery, nor used by any court or
9 administrative or adjudicatory body in any action or proceeding therein
10 except that which is necessary for the adjudication of a notice of
11 liability issued pursuant to this section, and no public entity or
12 employee, officer or agent thereof shall disclose such information,
13 except that such photographs, microphotographs, videotape or any other
14 recorded images from such systems:

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

19 (B) (1) shall be furnished when described in a search warrant issued
20 by a court authorized to issue such a search warrant pursuant to article
21 six hundred ninety of the criminal procedure law or a federal court
22 authorized to issue such a search warrant under federal law, where such
23 search warrant states that there is reasonable cause to believe such
24 information constitutes evidence of, or tends to demonstrate that, a
25 misdemeanor or felony offense was committed in this state or another
26 state, or that a particular person participated in the commission of a
27 misdemeanor or felony offense in this state or another state, provided,
28 however, that if such offense was against the laws of another state, the
29 court shall only issue a warrant if the conduct comprising such offense
30 would, if occurring in this state, constitute a misdemeanor or felony
31 against the laws of this state; and

32 (2) shall be furnished in response to a subpoena duces tecum signed by
33 a judge of competent jurisdiction and issued pursuant to article six
34 hundred ten of the criminal procedure law or a judge or magistrate of a
35 federal court authorized to issue such a subpoena duces tecum under
36 federal law, where the judge finds and the subpoena states that there is
37 reasonable cause to believe such information is relevant and material to
38 the prosecution, or the defense, or the investigation by an authorized
39 law enforcement official, of the alleged commission of a misdemeanor or
40 felony in this state or another state, provided, however, that if such
41 offense was against the laws of another state, such judge or magistrate
42 shall only issue such subpoena if the conduct comprising such offense
43 would, if occurring in this state, constitute a misdemeanor or felony in
44 this state; and

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

48 (b) If the city of Albany establishes a demonstration program pursuant
49 to subdivision (a) of this section, the owner of a vehicle shall be
50 liable for a penalty imposed pursuant to this section if such vehicle
51 was used or operated with the permission of the owner, express or
52 implied, within a school speed zone in violation of subdivision (c) or
53 during the times authorized pursuant to subdivision (a) of this section
54 in violation of subdivision (b), (d), (f) or (g) of section eleven
55 hundred eighty of this article, such vehicle was traveling at a speed of
56 more than ten miles per hour above the posted speed limit in effect

1 within such school speed zone, and such violation is evidenced by infor-
2 mation obtained from a photo speed violation monitoring system; provided
3 however that no owner of a vehicle shall be liable for a penalty imposed
4 pursuant to this section where the operator of such vehicle has been
5 convicted of the underlying violation of subdivision (b), (c), (d), (f)
6 or (g) of section eleven hundred eighty of this article.

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

9 1. "manual on uniform traffic control devices" or "MUTCD" shall mean
10 the manual and specifications for a uniform system of traffic control
11 devices maintained by the commissioner of transportation pursuant to
12 section sixteen hundred eighty of this chapter;

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

15 3. "photo speed violation monitoring system" shall mean a vehicle
16 sensor installed to work in conjunction with a speed measuring device
17 which automatically produces two or more photographs, two or more micro-
18 photographs, a videotape or other recorded images of each vehicle at the
19 time it is used or operated in a school speed zone in violation of
20 subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty
21 of this article in accordance with the provisions of this section; and

22 4. "school speed zone" shall mean a distance not to exceed one thou-
23 sand three hundred twenty feet on a highway passing a school building,
24 entrance or exit of a school abutting on the highway.

25 (d) A certificate, sworn to or affirmed by a technician employed by
26 the city of Albany, or a facsimile thereof, based upon inspection of
27 photographs, microphotographs, videotape or other recorded images
28 produced by a photo speed violation monitoring system, shall be prima
29 facie evidence of the facts contained therein. Any photographs, micro-
30 photographs, videotape or other recorded images evidencing such a
31 violation shall include at least two date and time stamped images of the
32 rear of the motor vehicle that include the same stationary object near
33 the motor vehicle and shall be available for inspection reasonably in
34 advance of and at any proceeding to adjudicate the liability for such
35 violation pursuant to this section.

36 (e) An owner liable for a violation of subdivision (b), (c), (d), (f)
37 or (g) of section eleven hundred eighty of this article pursuant to a
38 demonstration program established pursuant to this section shall be
39 liable for monetary penalties in accordance with a schedule of fines and
40 penalties to be promulgated by the parking violations bureau of the city
41 of Albany. The liability of the owner pursuant to this section shall not
42 exceed fifty dollars for each violation; provided, however, that such
43 parking violations bureau may provide for an additional penalty not in
44 excess of twenty-five dollars for each violation for the failure to
45 respond to a notice of liability within the prescribed time period.

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

51 (g) 1. A notice of liability shall be sent by first class mail to each
52 person alleged to be liable as an owner for a violation of subdivision
53 (b), (c), (d), (f) or (g) of section eleven hundred eighty of this arti-
54 cle pursuant to this section, within fourteen business days if such
55 owner is a resident of this state and within forty-five business days if
56 such owner is a non-resident. Personal delivery on the owner shall not

1 be required. A manual or automatic record of mailing prepared in the
2 ordinary course of business shall be prima facie evidence of the facts
3 contained therein.

4 2. A notice of liability shall contain the name and address of the
5 person alleged to be liable as an owner for a violation of subdivision
6 (b), (c), (d), (f) or (g) of section eleven hundred eighty of this arti-
7 cle pursuant to this section, the registration number of the vehicle
8 involved in such violation, the location where such violation took
9 place, the date and time of such violation, the identification number of
10 the camera which recorded the violation or other document locator
11 number, at least two date and time stamped images of the rear of the
12 motor vehicle that include the same stationary object near the motor
13 vehicle, and the certificate charging the liability.

14 3. The notice of liability shall contain information advising the
15 person charged of the manner and the time in which he or she may contest
16 the liability alleged in the notice. Such notice of liability shall also
17 contain a prominent warning to advise the person charged that failure to
18 contest in the manner and time provided shall be deemed an admission of
19 liability and that a default judgment may be entered thereon.

20 4. The notice of liability shall be prepared and mailed by the city of
21 Albany, or by any other entity authorized by the city to prepare and
22 mail such notice of liability.

23 (h) Adjudication of the liability imposed upon owners of this section
24 shall be by the city of Albany parking violations bureau.

25 (i) If an owner receives a notice of liability pursuant to this
26 section for any time period during which the vehicle or the number plate
27 or plates of such vehicle was reported to the police department as
28 having been stolen, it shall be a valid defense to an allegation of
29 liability for a violation of subdivision (b), (c), (d), (f) or (g) of
30 section eleven hundred eighty of this article pursuant to this section
31 that the vehicle or the number plate or plates of such vehicle had been
32 reported to the police as stolen prior to the time the violation
33 occurred and had not been recovered by such time. For purposes of
34 asserting the defense provided by this subdivision, it shall be suffi-
35 cient that a certified copy of the police report on the stolen vehicle
36 or number plate or plates of such vehicle be sent by first class mail to
37 the city of Albany parking violations bureau or by any other entity
38 authorized by the city to prepare and mail such notice of liability.

39 (j) Adjudication of the liability imposed upon owners of this section
40 shall be by the city of Albany parking violations bureau.

41 (k) 1. An owner who is a lessor of a vehicle to which a notice of
42 liability was issued pursuant to subdivision (g) of this section shall
43 not be liable for the violation of subdivision (b), (c), (d), (f) or (g)
44 of section eleven hundred eighty of this article pursuant to this
45 section, provided that:

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

49 (ii) within thirty-seven days after receiving notice from such bureau
50 of the date and time of a liability, together with the other information
51 contained in the original notice of liability, the lessor submits to
52 such bureau the correct name and address of the lessee of the vehicle
53 identified in the notice of liability at the time of such violation,
54 together with such other additional information contained in the rental,
55 lease or other contract document, as may be reasonably required by such
56 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 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 subdivision (g) of this section.

(l) 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.

(m) 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.

(n) If the city adopts a demonstration program pursuant to subdivision (a) of this section it shall conduct a study and submit an annual report on the results of the use of photo devices to the governor, the temporary president of the senate and the speaker of the assembly on or before the first day of June next succeeding the effective date of this section and on the same date in each succeeding year in which the demonstration program is operable. Such report shall include:

1. the locations where and dates when photo speed violation monitoring 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 the 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 photo speed violation monitoring systems were used, to the extent the 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 photo speed violation monitoring 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;

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

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

4 7. the number of violations recorded within each school speed zone
5 where a photo speed violation monitoring system is used that were:

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

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

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

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

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

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

17 10. the number of violations adjudicated and the results of such adju-
18 dications including breakdowns of dispositions made for violations
19 recorded by such systems;

20 11. the total amount of revenue realized by the city in connection
21 with the program;

22 12. the expenses incurred by the city in connection with the program;
23 and

24 13. the quality of the adjudication process and its results.

25 (o) It shall be a defense to any prosecution for a violation of subdi-
26 vision (b), (c), (d), (f) or (g) of section eleven hundred eighty of
27 this article pursuant to this section that such photo speed violation
28 monitoring system was malfunctioning at the time of the alleged
29 violation.

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

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

35 § 3. The purchase or lease of equipment for a demonstration program
36 established pursuant to section 1180-f of the vehicle and traffic law,
37 as added by section one of this act, shall be subject to the provisions
38 of section 103 of the general municipal law.

39 § 4. This act shall take effect on the thirtieth day after it shall
40 have become a law and shall expire December 31, 2028, when upon such
41 date the provisions of this act shall be deemed repealed.

42 Effective immediately, the addition, amendment and/or repeal of any
43 rule or regulation necessary for the implementation of this act on its
44 effective date are authorized to be made and completed on or before such
45 effective date.