

STATE OF NEW YORK

9883

IN ASSEMBLY

April 26, 2024

Introduced by M. of A. PRETLOW -- 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 authorizing the city of Mt. Vernon to establish a school speed zone demonstration 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:

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

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

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

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1 activities at the school and up to thirty minutes immediately before and
2 up to thirty minutes immediately after such student activities. In
3 selecting a school speed zone in which to install and operate a photo
4 speed violation monitoring system, the city shall consider criteria
5 including, but not limited to, the speed data, crash history, and the
6 roadway geometry applicable to such school speed zone.

7 2. No photo speed violation monitoring system shall be used in a
8 school speed zone unless (i) on the day it is to be used it has success-
9 fully passed a self-test of its functions; and (ii) it has undergone an
10 annual calibration check performed pursuant to paragraph four of this
11 subdivision. The city shall install signs giving notice that a photo
12 speed violation monitoring system is in use to be mounted on advance
13 warning signs notifying motor vehicle operators of such upcoming school
14 speed zone and/or on speed limit signs applicable within such school
15 speed zone, in conformance with standards established in the MUTCD.

16 3. Operators of photo speed violation monitoring systems shall have
17 completed training in the procedures for setting up, testing, and oper-
18 ating such systems. Each such operator shall complete and sign a daily
19 set-up log for each such system that such operator operates that (i)
20 states the date and time when, and the location where, the system was
21 set up that day, and (ii) states that such operator successfully
22 performed, and the system passed, the self-tests of such system before
23 producing a recorded image that day. The city shall retain each such
24 daily log until the later of the date on which the photo speed violation
25 monitoring system to which it applies has been permanently removed from
26 use or the final resolution of all cases involving notices of liability
27 issued based on photographs, microphotographs, videotape or other
28 recorded images produced by such system.

29 4. Each photo speed violation monitoring system shall undergo an annu-
30 al calibration check performed by an independent calibration laboratory
31 which shall issue a signed certificate of calibration. The city shall
32 keep each such annual certificate of calibration on file until the final
33 resolution of all cases involving a notice of liability issued during
34 such year which were based on photographs, microphotographs, videotape
35 or other recorded images produced by such photo speed violation monitor-
36 ing system.

37 5. (i) Such demonstration program shall utilize necessary technologies
38 to ensure, to the extent practicable, that photographs, microphoto-
39 graphs, videotape or other recorded images produced by such photo speed
40 violation monitoring systems shall not include images that identify the
41 driver, the passengers, or the contents of the vehicle. Provided,
42 however, that no notice of liability issued pursuant to this section
43 shall be dismissed solely because such a photograph, microphotograph,
44 videotape or other recorded image allows for the identification of the
45 driver, the passengers, or the contents of vehicles where the city shows
46 that it made reasonable efforts to comply with the provisions of this
47 paragraph in such case.

48 (ii) Photographs, microphotographs, videotape or any other recorded
49 image from a photo speed violation monitoring system shall be for the
50 exclusive use of the city for the purpose of the adjudication of liabil-
51 ity imposed pursuant to this section and of the owner receiving a notice
52 of liability pursuant to this section, and shall be destroyed by the
53 city upon the final resolution of the notice of liability to which such
54 photographs, microphotographs, videotape or other recorded images
55 relate, or one year following the date of issuance of such notice of
56 liability, whichever is later. Notwithstanding the provisions of any

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

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

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

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

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

44 (b) If the city of Mt. Vernon establishes a demonstration program
45 pursuant to subdivision (a) of this section, the owner of a vehicle
46 shall be liable for a penalty imposed pursuant to this section if such
47 vehicle was used or operated with the permission of the owner, express
48 or implied, within a school speed zone in violation of subdivision (c)
49 or during the times authorized pursuant to subdivision (a) of this
50 section in violation of subdivision (b), (d), (f) or (g) of section
51 eleven hundred eighty of this article, such vehicle was traveling at a
52 speed of more than ten miles per hour above the posted speed limit in
53 effect within such school speed zone, and such violation is evidenced by
54 information obtained from a photo speed violation monitoring system;
55 provided however that no owner of a vehicle shall be liable for a penal-
56 ty imposed pursuant to this section where the operator of such vehicle

1 has been convicted of the underlying violation of subdivision (b), (c),
2 (d), (f) or (g) of section eleven hundred eighty of this article.

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

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

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

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

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

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

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

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

47 (g) 1. A notice of liability shall be sent by first class mail to each
48 person alleged to be liable as an owner for a violation of subdivision
49 (b), (c), (d), (f) or (g) of section eleven hundred eighty of this arti-
50 cle pursuant to this section, within fourteen business days if such
51 owner is a resident of this state and within forty-five business days if
52 such owner is a non-resident. Personal delivery on the owner shall not
53 be required. A manual or automatic record of mailing prepared in the
54 ordinary course of business shall be prima facie evidence of the facts
55 contained therein.

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

11 3. The notice of liability shall contain information advising the
12 person charged of the manner and the time in which such person may
13 contest the liability alleged in the notice. Such notice of liability
14 shall also contain a prominent warning to advise the person charged that
15 failure to contest in the manner and time provided shall be deemed an
16 admission of liability and that a default judgment may be entered there-
17 on.

18 4. The notice of liability shall be prepared and mailed by the city of
19 Mt. Vernon, or by any other entity authorized by the city to prepare and
20 mail such notice of liability.

21 (h) Adjudication of the liability imposed upon owners of this section
22 shall be by the city of Mt. Vernon parking violations bureau.

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

37 (j) Adjudication of the liability imposed upon owners of this section
38 shall be by the city of Mt. Vernon parking violations bureau.

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

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

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

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

4 3. Where the lessor complies with the provisions of paragraph one of
5 this subdivision, the lessee of such vehicle on the date of such
6 violation shall be deemed to be the owner of such vehicle for purposes
7 of this section, shall be subject to liability for such violation pursu-
8 ant to this section and shall be sent a notice of liability pursuant to
9 subdivision (g) of this section.

10 (l) 1. If the owner liable for a violation of subdivision (c) or (d)
11 of section eleven hundred eighty of this article pursuant to this
12 section was not the operator of the vehicle at the time of the
13 violation, the owner may maintain an action for indemnification against
14 the operator.

15 2. Notwithstanding any other provision of this section, no owner of a
16 vehicle shall be subject to a monetary fine imposed pursuant to this
17 section if the operator of such vehicle was operating such vehicle with-
18 out the consent of the owner at the time such operator operated such
19 vehicle in violation of subdivision (b), (c), (d), (f) or (g) of section
20 eleven hundred eighty of this article. For purposes of this subdivision
21 there shall be a presumption that the operator of such vehicle was oper-
22 ating such vehicle with the consent of the owner at the time such opera-
23 tor operated such vehicle in violation of subdivision (b), (c), (d), (f)
24 or (g) of section eleven hundred eighty of this article.

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

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

35 1. the locations where and dates when photo speed violation monitoring
36 systems were used;

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

41 3. the aggregate number, type and severity of crashes, fatalities,
42 injuries and property damage reported within school speed zones where
43 photo speed violation monitoring systems were used, to the extent the
44 information is maintained by the department of motor vehicles of this
45 state;

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

48 5. the number of violations recorded within each school speed zone
49 where a photo speed violation monitoring system is used, in the aggre-
50 gate on a daily, weekly and monthly basis;

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

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

55 (ii) more than twenty but not more than thirty miles per hour over the
56 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 (u) to read as follows:

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

35 § 3. The purchase or lease of equipment for a demonstration program
 36 established pursuant to section 1180-g 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 1, 2029, when upon such date
 41 the provisions of this act shall be deemed repealed. Effective imme-
 42 diately, the addition, amendment and/or repeal of any rule or regulation
 43 necessary for the implementation of this act on its effective date are
 44 authorized to be made and completed on or before such effective date.