STATE OF NEW YORK

2610

2023-2024 Regular Sessions

IN ASSEMBLY

January 26, 2023

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

AN ACT to amend the vehicle and traffic law, in relation to owner liability for failure of operator to comply with bus operation-related local law or regulation traffic restrictions and to the adjudication of certain parking infractions; and to amend part II of chapter 59 of the laws of 2010, amending the vehicle and traffic law and the public officers law relating to establishing a bus rapid transit demonstration program to restrict the use of bus lanes by means of bus lane photo devices, in relation to the effectiveness 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-c-1 to read as follows:

§ 1111-c-1. Owner liability for failure of operator to comply with bus operation-related traffic regulations. (a) Notwithstanding any other provision of law, in accordance with the provisions of this section, the city of New York is hereby authorized and empowered to impose monetary liability on the owner of a vehicle for failure of an operator thereof to comply with bus operation-related traffic regulations. The department of transportation of the city of New York and/or an applicable mass transit agency, shall operate photo devices that may be stationary or mobile and shall be activated at locations determined by such department of transportation and/or on buses selected by the applicable mass transit agency.

(b) Any image or images captured by photo devices shall be inadmissible in any disciplinary proceeding convened by the applicable mass transit agency or any subsidiary thereof and any proceeding initiated by the department involving licensure privileges of bus operators. Any mobile bus photo device mounted on a bus shall be directed outwardly from such bus to capture images of vehicles operated in violation of bus opera-

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

LBD01096-01-3

tion-related traffic regulations, and images produced by such device shall not be used for any other purpose in the absence of a court order requiring such images to be produced.

(c) 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 photo device pursuant to this section. Such measures shall include:

1. utilization of necessary technologies to ensure, to the extent practicable, that images produced by such photo devices shall not include images that identify the driver, the passengers, or the contents of a 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 vehicle;

2. a prohibition on the use or dissemination of vehicles' license plate information and other information and images captured by photo devices except:

(i) as required to establish liability under this section or collect payment of penalties;

(ii) as required by court order;

(iii) as required pursuant to a search warrant issued in accordance with the criminal procedure law or a subpoena; or

(iv) as otherwise required by law.

3. the installation of signage that is clearly visible to drivers at regular intervals along and adjacent to bus lanes stating that mobile and stationary photo devices are used to enforce restrictions relating to bus operation traffic restrictions including stopping, standing, parking and turning movements, in conformance with standards established in the MUTCD; and

4. oversight procedures to ensure compliance with the privacy protection measures under this subdivision.

(d) Warning notices of violation shall be issued during the first sixty days that photo devices pursuant to this section are active and in operation.

(e) 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, in violation of any bus operation-related traffic regulations and such violation is evidenced by information obtained from a photo device; 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 such bus operation-related traffic regulation.

(f) 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. "photo device" shall mean a mobile or stationary device that is capable of operating independently of an enforcement officer and produces one or more images of each vehicle at the time it is in violation of a bus operation-related traffic regulation.

3. "bus operation-related traffic regulations" shall mean the restrictions set forth in chapter four of title thirty-four of the rules of the city of New York affecting bus operations including but not limited to the following: 4-08(f)(4), general no standing zones, bus lanes; 4-08(c)(3), violation of posted no standing rules prohibited, bus stop; 4-08(f)(1), general no standing zones, double parking; 4-08(k)(2),

special rules for commercial vehicles, no standing except trucks loading and unloading; 4-07(b)(1), obstruction of traffic, traffic lane; 4-08(e)(11), general no stopping zones, major roadways; 4-08(e)(4), general no stopping zones, intersections; 4-08(e)(5), general no stopping zones, crosswalks; 4-08(e)(12), general no stopping zones, obstructing traffic at intersection; and 4-05, turns; and 4-07(h)(2), driving on divided highways, U-turns.

4. "lessor" means any person, corporation, firm, partnership, agency, association or organization engaged in the business of renting or leasing vehicles to any lessee or bailee under a rental agreement, lease or otherwise, wherein the said lessee or bailee has the exclusive use of said vehicle for any period of time.

5. "lessee" means any person, corporation, firm, partnership, agency, association or organization that rents, bails, leases or contracts for the use of one or more vehicles and has the exclusive use thereof for any period of time.

6. "manual on uniform traffic control devices" or "MUTCD" means 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.

(g) 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 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.

(h) An owner liable for a violation under this section 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 bus operation-related traffic regulation pursuant to this section shall not exceed fifty dollars for a first offense, one hundred dollars for a second offense within a twelve-month period, one hundred fifty dollars for a third offense within a twelve-month period, two hundred dollars for a fourth offense within a twelve-month period, and two hundred fifty dollars for each subsequent offense within a twelve-month period; and 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.

(i) 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.

(j) 1. A notice of liability pursuant to this section shall be sent by first class mail to each person alleged to be liable as an owner for a violation under this section. 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 in such record of mailing.

2. A notice of liability pursuant to this section shall contain the name and address of the person alleged to be liable as an owner for a

violation, the registration number of the 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, the identification number of the photo device which recorded the violation or other document locator number, and whether the device was stationary or mobile. If the photo device was mobile, an identity of the vehicle containing such photo device shall be included in the notice.

3. A notice of liability pursuant to this section 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 persons 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. A notice of liability pursuant to this section 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.

(k) Adjudication of the liability imposed upon owners by this section shall be conducted by the New York city parking violations bureau.

(l) If an owner of a vehicle receives a notice of liability pursuant to this section for any time period during which such vehicle was reported to the police department as having been stolen, it shall be a valid defense to an allegation of liability that the 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 under this subdivision, it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail to the parking violations bureau of the city of New York.

(m) 1. An owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to this section shall not be liable for the violation of a bus operation-related traffic regulation, provided that:

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

(ii) within thirty-seven days after receiving notice from the parking violations bureau of the city of New York 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 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. Failure to timely submit such information shall render the lessor liable for the penalty prescribed in this section.

2. Where the lessor complies with the provisions of subparagraph (i) 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 (j) of this section.

(n) If the owner liable for a violation under this section was not the operator of the vehicle at the time of such violation, such owner may maintain an action for indemnification against the operator of the vehicle at the time of such violation.

(o) Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of a bus operation-related traffic regulation.

(p) The city of New York and the applicable mass transit agency shall submit a report on the results of the use of photo devices pursuant to this section to the governor, the temporary president of the senate, and the speaker of the assembly by April first, within twelve months of operation of such photo devices and every two years thereafter. Such report shall include, but not be limited to:

1. a description of the locations and/or buses where photo devices were used under this section;

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

3. the total number of notices of liability issued under this section;

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

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

6. the total amount of revenue realized by the city of New York and any participating mass transit agency under this section;

7. the quality of the adjudication process under this section and its results;

8. the total number of cameras by type of camera used under this section; and

9. the total cost to the city of New York and the total cost to any participating mass transit agency under this section.

(q) Any revenue from fines and penalties collected pursuant to this section from mobile bus photo devices shall be remitted by the city of New York to the applicable mass transit agency 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. The opening paragraph of section 14 of part II of chapter 59 of the laws of 2010, amending the vehicle and traffic law and the public officers law relating to establishing a bus rapid transit demonstration program to restrict the use of bus lanes by means of bus lane photo devices, as amended by section 2 of part D of chapter 39 of the laws of 2019, is amended to read as follows:

This act shall take effect on the ninetieth day after it shall have become a law [~~and shall expire 15 years after such effective date when upon such date the provisions of this act shall be deemed repealed~~]; and provided that any rules and regulations related to this act shall be promulgated on or before such effective date, provided that:

§ 3. Subdivision 1 of section 235 of the vehicle and traffic law, as separately added by chapters 421, 460 and 773 of the laws of 2021, paragraph (h) as added by chapter 421 of the laws of 2021 and as relettered by chapter 258 of the laws of 2022, is amended to read as follows:

1. Notwithstanding any inconsistent provision of any general, special or local law or administrative code to the contrary, in any city which heretofore or hereafter is authorized to establish an administrative tribunal: (a) to hear and determine complaints of traffic infractions constituting parking, standing or stopping violations, or (b) to adjudi-

cate the liability of owners for violations of subdivision (d) of section eleven hundred eleven of this chapter imposed pursuant to a local law or ordinance imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic-control indications through the installation and operation of traffic-control signal photo violation-monitoring systems, in accordance with article twenty-four of this chapter, or (c) to adjudicate the liability of owners for violations of subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty of this chapter imposed pursuant to a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with such posted maximum speed limits through the installation and operation of photo speed violation monitoring systems, in accordance with article thirty of this chapter, or (d) to adjudicate the liability of owners for violations of bus lane restrictions as defined by article twenty-four of this chapter imposed pursuant to a bus rapid transit program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with such bus lane restrictions through the installation and operation of bus lane photo devices, in accordance with article twenty-four of this chapter, or (e) to adjudicate the liability of owners for violations of toll collection regulations imposed by certain public authorities pursuant to the law authorizing such public authorities to impose monetary liability on the owner of a vehicle for failure of an operator thereof to comply with toll collection regulations of such public authorities through the installation and operation of photo-monitoring systems, in accordance with the provisions of section two thousand nine hundred eighty-five of the public authorities law and sections sixteen-a, sixteen-b and sixteen-c of chapter seven hundred seventy-four of the laws of nineteen hundred fifty, or (f) to adjudicate the liability of owners for violations of section eleven hundred seventy-four of this chapter when meeting a school bus marked and equipped as provided in subdivisions twenty and twenty-one-c of section three hundred seventy-five of this chapter imposed pursuant to a local law or ordinance imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with school bus red visual signals through the installation and operation of school bus photo violation monitoring systems, in accordance with article twenty-nine of this chapter, or (g) to adjudicate the liability of owners for violations of section three hundred eighty-five of this chapter and the rules of the department of transportation of the city of New York in relation to gross vehicle weight and/or axle weight violations imposed pursuant to a weigh in motion demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with such gross vehicle weight and/or axle weight restrictions through the installation and operation of weigh in motion violation monitoring systems, in accordance with article ten of this chapter, or (h) to adjudicate the liability of owners for violations of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this chapter imposed pursuant to a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with such posted maximum speed limits within a highway construction or maintenance work area through the installation and operation of photo speed violation monitoring systems, in accordance with article thirty of this chapter, **or (i) to adjudicate the liability of owners for any other violation of a bus operation-related traffic regulation, in accordance with article twenty-four of this chapter,** such tribunal and the rules

and regulations pertaining thereto shall be constituted in substantial conformance with the following sections.

§ 4. This act shall take effect immediately; provided that section one of this act shall take effect one year after it shall have become a law. 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 and completed on or before such effective date.