*** § 1111-c. Owner liability for failure of operator to comply with bus lane restrictions.** (a) 1. Notwithstanding any other provision of law, the city of New York is hereby authorized and empowered to establish a bus rapid transit program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with bus lane restrictions in such city in accordance with the provisions of this section. The New York city department of transportation or applicable mass transit agency, for purposes of the implementation of such program, shall operate bus lane photo devices only within designated bus lanes in such bus rapid transit program. Such bus lane photo devices may be stationary or mobile and shall be activated at locations determined by such department of transportation and/or on buses selected by such department of transportation in consultation with the applicable mass transit agency, however, the applicable mass transit agency may also install no less than fifty mobile bus lane photo devices on buses operating on designated bus lanes in such bus rapid transit program below 96th street in the borough of Manhattan, in consultation with the New York city department of transportation for the purposes of this section.

2. Any image or images captured by bus lane 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 lane photo device mounted on a bus shall be directed outwardly from such bus to capture images of vehicles operated in violation of bus lane restrictions, 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.

3. (i) 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 bus lane photo device. Such measures shall include:

(A) utilization of necessary technologies to ensure, to the extent practicable, that photographs, microphotographs, videotape or other recorded images produced by such bus lane photo devices 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 a vehicle where the city shows that it made reasonable efforts to comply with the provisions of this paragraph in such case;

(B) the installation of signage that is clearly visible to drivers at regular intervals along and adjacent to bus lanes stating that mobile and/or stationary bus lane photo devices are used to enforce bus lane restrictions, in conformance with standards established in the MUTCD; and

(C) oversight procedures to ensure compliance with the privacy protection measures under this subdivision.

(ii) Photographs, microphotographs, videotape or any other recorded image from a bus lane photo device shall be for the exclusive use of the city of New York 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 such 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 bus lane photo device 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.

(iii) The demonstration program authorized pursuant to this section is prohibited from utilizing and from arranging for the utilization of biometric identifying technology, including but not limited to facial recognition technology, for any purpose. The use, and the arrangement for the use, of biometric identifying technology, including but not limited to facial recognition technology, on photographs, microphotographs, videotape, or any other recorded image or data

produced by a bus lane photo device, by any person for any purpose, are prohibited. For purposes of this subparagraph, "person" shall include, but not be limited to, a human being, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality, a court or an administrative or adjudicatory body, and any employee, officer, and agent of the foregoing.

(iv) Any applicable mass transit agency operating bus lane photo devices shall be prohibited from accessing any photographs, microphotographs, videotapes, other recorded images or data from bus lane photo devices but shall provide, pursuant to an agreement with the city of New York, for the proper handling and custody of such photographs, microphotographs, videotapes, other recorded images and data produced by such systems, and for the forwarding of such photographs, microphotographs, videotapes, other recorded images and data to such city for the purpose of determining whether a motor vehicle was operated in violation of bus lane restrictions and imposing monetary liability on the owner of such motor vehicle therefor.

(v) Every bus upon which a mobile bus lane photo device is installed and operated pursuant to a bus rapid transit program authorized pursuant to this section shall be equipped with signs, placards or other displays giving notice to approaching motor vehicle operators that bus lane photo devices are used to enforce bus lane restrictions.

4. Within the city of New York, such bus lane photo devices may only be operated on designated bus lanes. Warning notices of violation be issued during the first sixty days that bus lane photo devices are operated on each route in the bus rapid transit program that is established after June fifteenth, two thousand fifteen.

(b) If the city of New York has established a bus rapid transit program pursuant to subdivision (a) 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, in violation of any bus lane restrictions that apply to routes within such program, and such violation is evidenced by information obtained from a bus lane 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 any bus lane restrictions.

(c) 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. "bus lane photo device" shall mean a 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 bus lane restrictions.

3. "bus lane restrictions" shall mean restrictions on the use of designated traffic lanes by vehicles other than buses imposed on routes within a bus rapid transit program by local law and signs erected by the department of transportation of a city that establishes such a program pursuant to this section.

4. "Bus Rapid Transit Phase I plan" shall mean the following five bus rapid transit routes as designated by the New York city department of transportation: Fordham Road, First/Second Avenue, Nostrand Avenue, Thirty-Fourth Street, Hylan Boulevard, and an undesignated route in the borough of Queens not to exceed ten miles.

5. "bus rapid transit program" shall mean routes designated by the New York city department of transportation in consultation with the applicable mass transit agency, in addition to the Bus Rapid Transit Phase I plan routes, that operate on designated bus lanes and that may include upgraded signage, enhanced road markings, minimum bus stop spacing, off-board fare payment, traffic signal priority for buses, and any other enhancement that increases bus speed or reliability.

6. "designated bus lane" shall mean a lane dedicated for the exclusive use of buses with the exceptions allowed under 4-12(m) and 4-08(a)(3) of title 34 of the rules of the city of New York.

7. "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.

8. "biometric identifying technology" shall mean any tool using an automated or semi-automated process that assists in verifying a person's identity based on a person's biometric information.

9. "biometric information" shall mean any measurable physical, physiological or behavioral characteristics that are attributable to a person, including but not limited to facial characteristics, fingerprint characteristics, hand characteristics, eye characteristics, vocal characteristics, and any other characteristics that can be used to identify a person including, but not limited to: fingerprints; handprints; retina and iris patterns; DNA sequence; voice; gait; and facial geometry.

10. "facial recognition" shall mean any tool using an automated or semi-automated process that assists in uniquely identifying or verifying a person by comparing and analyzing patterns based on the person's face.

(d) A certificate, sworn to or affirmed by a technician employed by the city in which the charged violation occurred, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a bus lane 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.

(e) An owner liable for a violation of a bus lane restriction imposed on any route within a bus rapid transit program 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. The liability of the owner pursuant to this section shall not exceed fifty dollars for a first violation, one hundred dollars for a second violation within a twelve-month period, one hundred fifty dollars for a

third violation within a twelve-month period, two hundred dollars for a fourth violation within a twelve-month period, and two hundred fifty dollars for each subsequent violation within a twelve-month period; 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.

(f) 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.

(g) 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 a bus lane restriction. 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 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 a bus lane restriction, 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 and the identification number of the bus lane photo device which recorded the violation or other document locator number.

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 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. The notice of liability 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.

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

(h) 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 for a violation of a bus lane restriction 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 provided by 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 such city.

(i) 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 a bus lane restriction, 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 bureau 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.

2. Failure to comply with subparagraph (ii) of paragraph one of this subdivision shall render the lessor 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.

(j) 1. If the owner liable for a violation of a bus lane restriction 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 failed to obey a bus lane restriction. 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 failed to obey a bus lane restriction.

(k) Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of bus lane restrictions.

(l) If the city of New York adopts a bus rapid transit demonstration program pursuant to subdivision (a) of this section it shall submit a report on the results of the use of bus lane photo devices to the governor, the temporary president of the senate and the speaker of the assembly by April first, two thousand twelve and every two years thereafter. The city of New York and applicable mass transit agency shall also make such reports available on their public-facing websites, provided that they may provide aggregate data from paragraph one of this subdivision if the city finds that publishing specific location data would jeopardize public safety. Such report shall include, but not be limited to:

1. a description of the locations and/or buses where bus lane photo devices were used;

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

3. the total number of notices of liability issued;

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

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

6. the total amount of revenue realized by such city and any participating mass transit agency and an itemized list of expenditures made by the participating mass transit agency with these revenues;

7. the quality of the adjudication process and its results;

8. the total number of cameras by type of camera;

9. the total cost to the city and the total cost to any participating mass transit agency; and

10. a detailed report on the bus speeds, reliability, and ridership before and after implementation of the bus rapid transit demonstration program for each bus route, including current statistics.

(m) Any revenue from fines and penalties collected pursuant to this section from any mobile bus lane photo devices, not including any revenue shared with the city of New York pursuant to agreement 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.

(n) It shall be a defense to any prosecution for a violation of a bus lane restriction pursuant to a bus rapid transit program adopted pursuant to this section that such bus lane photo devices were malfunctioning at the time of the alleged violation.

(o) It shall be a defense to any notice of liability issued to the owner of a metropolitan transportation authority vehicle for standing, stopping, or parking in a bus lane in violation of the applicable provisions of section 4-08 of chapter four of title thirty-four of the rules of the city of New York pursuant to a bus rapid transit program

adopted pursuant to this section that the operator of the vehicle was a metropolitan transportation authority employee performing authorized duties involving a metropolitan transportation authority vehicle in such bus lane.

* NB Repealed July 1, 2028