

Introduced by: Presiding Officer Nicoletto, Deputy Presiding Officer Kopel, Alternate Deputy Presiding Officer Ford, Minority Leader Abrahams, and Legislators Bynoe, Solages, Mule, Gaylor, Muscarella, Birnbaum, DeRiggi-Whitton, Kennedy, McKeivitt, Schaefer, Ferretti, Drucker, Walker, Lafazan, and Rhoads

LOCAL LAW NO. 19 -2019

A LOCAL LAW IN RELATION TO ESTABLISHING A DEMONSTRATION PROGRAM IMPOSING OWNER LIABILITY FOR FAILURE OF AN OPERATOR TO STOP FOR A SCHOOL BUS DISPLAYING A RED VISUAL SIGNAL AND STOP-ARM AND AMENDING THE NASSAU COUNTY ADMINISTRATIVE CODE IN RELATION TO THE JURISDICTION OF THE NASSAU COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY.

Passed by the Nassau County Legislature on September 23, 2019

Voting: ayes: 18, naves: 0, abstained: 0

Became on law on October 23, 2019 with the approval of the County Executive

PETER J. CLINES
MINORITY COUNSEL
APPROVED AS TO FORM

WHEREAS, the New York State Legislature has passed, and the Governor has signed legislation authorizing local governments to enter into agreements with school districts for the installation and operation of school bus photo violation monitoring systems on school buses owned or operated by such school districts; and

WHEREAS, the State legislation allows local governments to impose liability on the owners of motor vehicles for the failure of the drivers of such vehicles to comply with the law prohibiting the overtaking and passing of stopped school buses displaying red visual signals; and

WHEREAS, several jurisdictions across the country have enacted similar legislation in response to growing concern over the number of violations that occur while a school bus stop-arm is deployed, thereby endangering the lives of children; and

WHEREAS, technological advancements now allow for the monitoring, capture, transfer and review of school bus stop arm infractions in violation of New York State traffic law; and

WHEREAS, this Legislature finds that the use of comprehensive school bus photo violation monitoring systems can play an instrumental role in ensuring motorist accountability and child safety throughout Nassau County; now therefore

BE IT ENACTED by the Legislature of the County of Nassau as follows:

Section 1. A new title 86 is added to the Miscellaneous Laws of Nassau County to read as follows:

TITLE 86

VEHICLE OWNER LIABILITY FOR FAILURE OF OPERATOR TO STOP FOR A SCHOOL BUS DISPLAYING A RED VISUAL SIGNAL AND STOP-ARM

§ 1. Program Established.

- a. There is hereby established a demonstration program imposing monetary liability on owners of vehicles for failure of the operators thereof to comply with section 1174 of the New York Vehicle and Traffic Law when meeting a school bus marked and equipped as provided in subdivisions 20 and 21-c of section 375 of the New York Vehicle and Traffic Law in Nassau County.
- b. Under such demonstration program the County is empowered to install and operate school bus photo violation monitoring systems which may be stationary or mobile, and which may be installed, pursuant to an agreement with a school district within the County on school buses owned and operated by such school district or privately owned and operated for compensation under contract with such district. Provided, however, that:
 - i. no stationary school bus photo violation monitoring system shall be installed or operated by the County, except on roadways under the jurisdiction of the County; and
 - ii. no mobile school bus photo violation monitoring system shall be installed or operated on any such school buses unless the County and such district enter into an agreement for such installation and operation.
- c. To carry out the demonstration program, the County is authorized to enter into agreements with school districts for the installation, maintenance and use of school bus photo violation monitoring systems, for the proper handling and custody of 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 the County, subject to the provisions of this section and section 1174-a of the New York Vehicle and Traffic Law and approval of the County Legislature, provided however, that the County shall not enter into an agreement with any city school district wholly contained within a city.

- d. Nothing in this local law shall be construed to prevent the County or school district at any time from withdrawing from or terminating an agreement for the installation, maintenance and use of school bus photo violation monitoring systems, provided, however, that the County or the school district shall provide no less than twenty days' notice to other signatories of such agreements before withdrawing.
- e. The total cost to the school district of the installation, maintenance and use of school bus photo violation monitoring systems pursuant to an agreement authorized by this local law shall be borne entirely by the County. On or before September first of each year, the school district shall determine and certify to the County the total cost to the school district for the school year ending the preceding June thirtieth of installing, maintaining and using such systems within the County, for the proper handling and custody of 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 the County. On or before the following December first of each year, the County shall pay to the school district such cost so certified to it on or before the preceding September first. Not later than twenty days after each such payment is submitted or is due, whichever occurs first, the school district shall submit to the County budget director and the chairpersons of the Rules and Finance Committees of the Legislature a report showing the amount of costs so certified and the amount of payments so received or due. If the County fails to make the payment required to the school district by the twentieth day after the date such payment was due, (i) the school district shall notify the County budget director and the chairpersons of the Rules and Finance Committees of the Legislature of such occurrence within twenty-four hours of such day; and (ii) the demonstration program shall be suspended within the County until such time as the County makes the payment required to the school district. The school district shall notify the County budget director and the chairpersons of the Rules and Finance Committees of the Legislature of such payment within seven business days of its receipt provided, however, that any notice of liability issued prior to such date shall not be voided.
- f. The contract between the County and the school district shall provide that any image or images captured by school bus photo violation monitoring systems shall be inadmissible in any disciplinary proceeding convened by such school district or any school bus contractor thereof, and any proceeding initiated by the New York State Department of Transportation involving licensure privileges of school bus operators. Any school bus photo violation monitoring device mounted on a school bus shall be directed outwardly from such school bus to capture images of vehicles operated in violation of section 1174 of this chapter, and images produced by such device shall not be used for any other purpose.
- g. Any school district participating in the demonstration program shall be prohibited from accessing any photographs, microphotographs, videotapes, other recorded images or data from school bus photo violation monitoring systems but shall provide, pursuant to the agreement with the County, as provided in this local law, 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 the County for the purpose of determining whether a motor vehicle was operated in violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law and imposing monetary liability on the owner of such motor vehicle therefor.

- h. The agreement between the County and the school district shall provide that photographs, microphotographs, videotapes, other recorded images and data produced by school bus photo violation monitoring systems shall be destroyed (a) ninety days after the date of the alleged imposition of liability if a notice of liability is not issued for such alleged imposition of liability pursuant to this local law or (b) upon final disposition of a notice of liability issued pursuant to this local law.
- i. The County 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 school bus photo violation monitoring device. Such measures shall include:
 - i. utilization of necessary technologies to ensure, to the extent practicable, that photographs produced by such school bus photo violation monitoring systems shall not include images that identify the driver, the passengers, the contents of the vehicle, pedestrians and cyclists provided, however, that no notice of liability issued pursuant to this section shall be dismissed solely because a photograph or photographs allow for the identification of the contents of a vehicle, provided that the County has made a reasonable effort to comply with the provisions of this paragraph;
 - ii. a prohibition on the use or dissemination of vehicles' license plate information and other information and images captured by school bus photo violation monitoring systems except: (a) as required to establish liability under this section or collect payment of penalties; (b) as required by court order; or (c) as otherwise required by law;
 - iii. the installation of signage in conformance with standards established in the MUTCD at each roadway entrance of the jurisdictional boundaries of the County giving notice that school bus photo violation monitoring systems are used to enforce restrictions on vehicles violating section 1174 of the New York Vehicle and Traffic Law. For the purposes of this paragraph, the term "roadway" shall not include state expressway routes or state interstate routes but shall include controlled-access highway exit ramps that enter the boundaries of the County; and
 - iv. oversight procedures to ensure compliance with the aforementioned privacy protection measures.

§2. Definitions.

For purposes of this local law, the following terms shall have the following meanings:

- a. "County" shall mean the County of Nassau;
- b. "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 680 of the New York Vehicle and Traffic Law;
- c. "Owner" shall have the meaning provided in article two-b the New York Vehicle and Traffic Law; and
- d. "School bus photo violation monitoring system" shall mean a device that is capable of operating independently of an enforcement officer which is installed to work in conjunction with a school bus stop-arm and which automatically produces two or more photographs, two or more microphotographs, a videotape or other recorded images of a vehicle at the time it is used or operated in violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law.

§ 3. Penalties.

An owner liable for a violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law pursuant to this local law shall be liable for monetary penalties in accordance with the following schedule of fines and penalties:

- a. two hundred fifty dollars for a first violation;
- b. two hundred seventy-five dollars for a second violation committed within eighteen months of the first violation;
- c. three hundred dollars for a third or subsequent violation all of which were committed within eighteen months from the first violation, and
- d. an additional penalty of twenty-five dollars for each violation for the failure to respond to a notice of liability within the prescribed time period.

§ 4. Notice of Liability.

- a. 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 (a) of section 1174 of the New York Vehicle and Traffic Law. 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.

- b. 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 (a) of section 1174 of the New York Vehicle and Traffic Law, the registration number of the vehicle involved in such violation, the location where such violation took place, the date and time of such violation and the identification number of the camera which recorded the violation or other document locator number.
- c. A 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.
- d. The notice of liability shall be prepared and mailed by the Nassau County Traffic and Parking Violations Agency.

§ 5. Owner Liability.

- a. The demonstration program established hereunder shall provide that the owner of a vehicle shall be liable for a penalty imposed pursuant to this local law if such vehicle was used or operated with the permission of the owner, express or implied, in violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law and such violation is evidenced by information obtained from a school bus photo violation monitoring 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 (a) of section 1174 of the New York Vehicle and Traffic Law. For purposes of this subsection, there shall be a presumption that such vehicle was used and operated with the consent of the owner at the time it was used or operated in violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law.
- b. If an owner receives a notice of liability pursuant to this local law for any time period during which the vehicle was reported to the police as having been stolen, it shall be a valid defense to an allegation of liability for a violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law pursuant to this local law 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 Nassau County Traffic and Parking Violations Agency, court having jurisdiction or parking violations bureau.
- c. An owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to this local law shall not be liable for the violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law, provided that he or she sends to the Nassau County Traffic and Parking Violations Agency a copy of the rental, lease or other such contract

document covering such vehicle on the date of the violation, with the name and address of the lessee clearly legible, within 37 days after receiving notice from the agency of the date and time of such violation, together with the other information contained in the original notice of liability. Failure to send such information within such 37-day time period shall render the owner liable for the penalty prescribed by this local law. Where the Lessor complies with the provisions of this paragraph, 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 the violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law pursuant to this local law and shall be sent a notice of liability pursuant to section 4 of this local law.

- d. A certificate, sworn to or affirmed by a technician employed by the County, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a school bus photo violation monitoring system, 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.
- e. It shall be a defense to any prosecution for a violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law pursuant to this local law that such school bus stop-arms were malfunctioning at the time of the alleged violation.
- f. For the purpose of informing and educating owners of motor vehicles in this County during the first thirty-day period in which a school bus photo violation monitoring system is in operation pursuant to the provisions of this local law, all owners of motor vehicles who would otherwise be held liable for failure of operators thereof to comply with section 1174 of the New York Vehicle and Traffic Law when meeting a school bus marked and equipped as provided in subdivisions 20 and 21-c of section 375 of such law, shall be issued a written warning in lieu of a notice of liability.

§ 6. Adjudication of Liability.

Liability pursuant to the demonstration program established hereunder shall be imposed upon owners by the Nassau County Traffic and Parking Violations Agency pursuant to section 24-1.1 of the Nassau County Administrative Code.

§ 7. Action for Indemnification.

If the owner held liable for a violation of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law pursuant to this local law was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.

§ 8. Annual Report.

- a. The County shall submit an annual report on the results of the use of a school bus photo violation monitoring system to the Governor, the temporary president of the Senate and the speaker of the Assembly on or before June 1 of each year in which the demonstration program is operable. Such report shall include, but not be limited to:
 - i. The number of buses and a description of the routes where stationary and mobile school bus photo violation monitoring systems were used;
 - ii. The aggregate number, type and severity of accidents reported at locations where a school bus photo violation monitoring system is used for the year preceding the installation of such system, to the extent the information is maintained by the department of motor vehicles of this state;
 - iii. The aggregate number, type and severity of accidents reported at locations where a school bus photo violation monitoring system is used, to the extent the information is maintained by the department of motor vehicles of this state;
 - iv. The number of violations recorded at each location where a school bus photo violation monitoring system is used and in the aggregate on a daily, weekly and monthly basis;
 - v. The number of convictions for violations of subdivision (a) of section 1174 of the New York Vehicle and Traffic Law recorded at each location where a school bus photo violation monitoring system is used on an annual basis, to the extent the information is maintained by the department of motor vehicles of this state;
 - vi. The total number of notices of liability issued for violations recorded by such systems;
 - vii. The number of fines and total amount of fines paid after the first notice of liability issued for violations recorded by such systems;
 - viii. The number of violations adjudicated and results of such adjudications including breakdowns of dispositions made for violations recorded by such systems which shall be provided at least annually to the County by the Nassau County Traffic and Parking Violations Agency;
 - ix. The total amount of revenue realized by the County from such adjudications;
 - x. The expenses incurred by the County in connection with the program;
 - xi. The quality of the adjudication process and its results including the total number of hearings scheduled, re-scheduled, and held; the total number of persons scheduled for such hearings; the total number of cases where fines were paid on or before the

hearing date; and the total number of default judgments entered. Such information shall be provided at least annually to the County by the Nassau County Traffic and Parking Violations Bureau; and

- xii. A description of public education activities conducted to warn motorists of the dangers of overtaking and passing stopped school buses.
- b. The County shall annually provide a copy of the annual report submitted pursuant to this local law, to each local law enforcement agency having jurisdiction to enforce violations of the vehicle and traffic law or any ordinance, rule or regulation relating to traffic adopted pursuant to such law on roadways within the County.

Section 2. Section 24-1.1 of the Nassau County Administrative Code, as amended by Local Law No. 12-2009, is amended to read as follows:

§ 24-1.1 Nassau County Traffic and Parking Violations Agency established. Subject to the provisions of section 24-1.0 of this title and article fourteen-B of the General Municipal Law, there shall be a department of the Nassau County government known as the Nassau County Traffic and Parking Violations Agency, which shall operate under the control and direction of the County Executive to assist the Nassau County District Court in the disposition and administration of infractions of traffic and parking laws, ordinances, rules and regulations, and the adjudication of liability of owners for violations of subdivision (d) of section [eleven hundred eleven] 1111 of the Vehicle and Traffic Law in accordance with section [eleven hundred eleven-b] 1111-b of such law and the liability of owners for violations of subdivision (a) of section 1174 of such law in accordance with section 1174-a of such law, except that said agency shall not have jurisdiction over those matters which are specifically excluded by section 371 (2) of the General Municipal Law

Section 3. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 4. SEQRA Determination.

It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L., section 0101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R. and section 1611 of the County Government Law of Nassau County, that the adoption

of this local law is a "Type II" Action within the meaning of Section 617.5(c)(27) and (33) of 6 N.Y.C.R.R., and, accordingly, is of a class of actions which do not have a significant effect on the environment; and no further review is required.

Section 5. Effective Date.

This local law shall take effect immediately upon final adoption and shall remain in full force and effect only until December 1, 2024.

APPROVED



County Executive

DATE 10-23-19