

*Includes Floor Amendments

Submitted by the County Executive and Introduced by

LOCAL LAW NO. 12 - 2009

A LOCAL LAW TO ESTABLISH A DEMONSTRATION PROGRAM IMPOSING LIABILITY ON THE OWNER OF A VEHICLE FOR FAILURE OF AN OPERATOR THEREOF TO COMPLY WITH TRAFFIC-CONTROL INDICATIONS AND AMENDING CHAPTER 272 OF THE LAWS OF 1939 CONSTITUTING THE NASSAU COUNTY ADMINISTRATIVE CODE IN RELATION TO SUCH PROGRAM

Passed by the Nassau County Legislature on May 18, 2009
Voting: ayes: 18 nays: 0 abstained: 0
Became a law on June 18, 2009 with the approval of the County Executive.

BE IT ENACTED by the Nassau County Legislature as follows:

Section 1. A new title 72 is added to the Miscellaneous Laws of Nassau County to read as follows:

TITLE 72

VEHICLE OWNER LIABILITY FOR FAILURE OF OPERATOR TO COMPLY WITH TRAFFIC-CONTROL INDICATIONS

§ 1. Program Established.

a. Notwithstanding any other provision of law, Nassau County is hereby authorized and empowered to establish a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic-control indications in accordance with the provisions of this title. The Department of Public Works, for purposes of implementation of such program, shall be authorized to

install traffic-control signal photo violation-monitoring devices and to operate such devices at no more than fifty intersections within and under the jurisdiction of the County at any one time.

b. Such demonstration program shall utilize necessary technologies to ensure, to the extent practicable, that photographs produced by such traffic-control signal photo violation-monitoring systems shall not include images that identify the driver, the passengers, or the contents of the vehicle. Notwithstanding this requirement, however, no notice of liability issued pursuant to this title 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.

c. A special revenue fund is hereby established, to commence concurrently with the implementation of this demonstration program, to which all revenues collected pursuant to this demonstration program shall be deposited.

d. All funds collected pursuant to this local law shall be utilized solely to pay for expenses associated with the implementation and administration of the demonstration program and to provide funding for contracts, approved by the Nassau County Legislature, between the Youth Board, Department of Senior Citizen Affairs, Department of Veterans Services, Department of Mental Health, Chemical Dependency and Developmental Disabilities Services and contract agencies.

§ 2. Definitions.

a. For purposes of this title, "owner" shall have the same meaning as provided in article 2-B of the Vehicle and Traffic Law.

b. For purposes of this title, "traffic-control signal photo violation-monitoring system" shall mean a vehicle sensor installed to work in conjunction with a traffic-control signal which automatically produces two or more photographs, two or more microphotographs, a videotape or other recorded images of each vehicle at the time it is used or operated in violation of subdivision (d) of section eleven hundred eleven of the Vehicle and Traffic Law.

§ 3. Owner Liability.

a. The owner of a vehicle shall be liable for a penalty imposed pursuant to this title if such vehicle was used or operated with the permission of the owner, express or implied, in violation of subdivision (d) of section eleven hundred eleven of the Vehicle and Traffic Law, and such violation is evidenced by information obtained from a traffic-control signal photo violation-monitoring system; provided, however, that no owner of a vehicle shall be liable for a penalty imposed pursuant to this title where the operator of

such vehicle has been convicted of the underlying violation of subdivision (d) of section eleven hundred eleven of the Vehicle and Traffic Law.

b. A certificate, sworn to or affirmed by a technician employed by Nassau County, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a traffic-control signal 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 imposed pursuant to this title.

c. An imposition of liability under this title shall not be deemed a conviction as 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.

d. If an owner receives a notice of liability pursuant to this title for any time period during which the 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 subdivision (d) of section eleven hundred eleven of the Vehicle and Traffic Law pursuant to this title 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, as the branch of the District Court of Nassau County that shall adjudicate liability of owners pursuant to section six of this title.

e. An owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to section five of this title shall not be liable for the violation of subdivision (d) of section eleven hundred eleven of the 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 thirty-seven days after receiving notice from the Traffic and Parking Violations 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 thirty-seven day time period shall render the lessor liable for the penalty prescribed by this title. 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 title, shall be subject to liability for the violation of subdivision (d) of section eleven hundred eleven of the Vehicle and Traffic Law pursuant to this title and shall be sent a notice of liability pursuant to section five of this title.

f. (1). If the owner liable for a violation of subdivision (d) of section eleven hundred eleven of the Vehicle and Traffic Law pursuant to this title 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 title, no owner of a vehicle shall be subject to a monetary fine imposed pursuant to this title 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 traffic-control indication. For purposes of this paragraph, there shall be a rebuttable 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 traffic-control indication.

g. Nothing in this title shall be construed to limit the liability of an operator of a vehicle for any violation of subdivision (d) of section eleven hundred eleven of the Vehicle and Traffic Law.

h. It shall be a defense to any prosecution for a violation of subdivision (d) of section eleven hundred eleven of the Vehicle and Traffic Law pursuant to this title that such traffic-control indications were malfunctioning at the time of the alleged violation.

§ 4. Fines

a. An owner liable for a violation of subdivision (d) of section eleven hundred eleven of the Vehicle and Traffic Law pursuant to this title shall be liable for a fine in the amount of fifty dollars for each violation. An additional penalty of twenty-five dollars for each violation shall be imposed for the failure to respond to a notice of liability within forty-two days after the mailing of the notice of liability.

b. All fines and penalties collected under this title shall be deposited with the county treasurer within the first ten days of the month following collection.

§ 5. 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 (d) of section eleven hundred eleven of the Vehicle and Traffic Law pursuant to this title. 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 (d) of section eleven hundred eleven of the Vehicle and Traffic Law pursuant to this title, 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. 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.

d. The notice of liability shall be prepared and mailed by the Nassau County Traffic and Parking Violations Agency or its designee.

§ 6. **Adjudication of Liability.** Adjudication of the liability imposed upon owners by this title shall be by the Nassau County Traffic and Parking Violations Agency, as a branch of the District Court of Nassau County.

§ 7. **Report.** The County shall submit an annual report on the results of the use of a traffic-control signal photo violation-monitoring system to the governor, the temporary president of the senate and the speaker of the assembly on or before June first, two thousand ten and on the same date in each succeeding year in which the demonstration program is operable. Such report shall include, but not be limited to:

a. a description of the locations where traffic-control signal photo violation-monitoring systems were used;

b. the aggregate number, type and severity of accidents reported at intersections where a traffic-control signal 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 New York State;

c. the aggregate number, type and severity of accidents reported at intersections where a traffic-control signal photo violation-monitoring system is used, to the extent the information is maintained by the department of motor vehicles of New York State;

d. the number of violations recorded at each intersection where a traffic-control signal photo violation-monitoring system is used and in the aggregate on a daily, weekly and monthly basis;

e. the total number of notices of liability issued for violations recorded by such systems;

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

g. the number of violations adjudicated and results of such adjudications including breakdowns of disposition made for violations recorded by such systems;

h. the total amount of revenue realized by the County;

- i. expenses incurred by the County in connection with the program; and
- j. quality of the adjudication process and its results.

§ 2. Section 24-1.1 of chapter 272 of the laws of 1939, constituting the Nassau County Administrative Code, as amended by chapter 527 of the laws of 2002, 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 of the Vehicle and Traffic Law in accordance with section eleven hundred eleven-b 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.

§ 3. This Legislature hereby finds and determines that action relating to this local law constitutes a Type II action pursuant to Title 6 of the New York Code of Rules and Regulations Section 617.5 (c) (16) (“installation of traffic control devices on existing streets, roads and highways”).

§ 4. This law shall take effect immediately.

APPROVED

Maurice Gottlieb

County Executive

DATE 6/18/09