

STATE OF NEW YORK

2316

2021-2022 Regular Sessions

IN ASSEMBLY

January 14, 2021

Introduced by M. of A. SIMON -- Multi-Sponsored by -- M. of A. CARROLL
-- 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 establishing a demonstration program on interstate route 278 in Kings county to enforce vehicle weight restriction on such interstate by means of mobile or stationary weigh in motion systems; 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:

Section 1. The vehicle and traffic law is amended by adding a new section 385-a to read as follows:

§ 385-a. Owner liability for violation of certain weight restrictions on interstate route 278 in Kings county. 1. For purposes of this section, the following terms shall have the following meanings:

(a) "owner" shall have the meaning provided in article two-B of this chapter.

(b) "vehicle weight restrictions" shall mean axle weight and gross vehicle weight restrictions established by section three hundred eighty-five of this article and the rules of the department of transportation of the city of New York, of a vehicle other than one operating in accordance with the terms and conditions of any overweight permit.

(c) "weigh in motion system" shall mean sensors installed to work in conjunction with other devices designed to capture and record the axle weight and gross vehicle weight of a vehicle, which sensors are capable of operating independently of an enforcement officer, and can produce one or more images of each such vehicle at the time it is in violation of vehicle weight restrictions.

(d) "weigh in motion system program" shall mean a demonstration program established by this section that operates exclusively on interstate route 278 in Kings county within the city of New York.

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

LBD01147-01-1

1 2. (a) Notwithstanding any other provision of law, the city of New
2 York is hereby authorized and empowered to establish a demonstration
3 weigh in motion system program on interstate route 278 in Kings county
4 for the enforcement of vehicle weight restrictions. Such program shall
5 impose monetary liability on the owner of a vehicle for failure of such
6 vehicle to comply with vehicle weight restrictions established by
7 section three hundred eighty-five of this article and the rules of the
8 department of transportation of such city when operated on such inter-
9 state. The New York city department of transportation, for purposes of
10 the implementation of such program, shall install and operate weigh in
11 motion systems on interstate route 278 in such county. Such systems may
12 be stationary or mobile and shall be activated at locations determined
13 by such department.

14 (b) The New York state department of transportation shall enter into a
15 memorandum of understanding together with the New York city department
16 of transportation for the purposes of coordinating the planning, design,
17 installation, construction and maintenance of the weigh in motion system
18 program. Such memorandum shall address the use of systems, devices and
19 other facilities owned and operated by the state for the purposes of
20 such program. Such memorandum of understanding shall be entered into no
21 later than sixty days from the effective date of this section.

22 (c) Any image produced by the weigh in motion system shall not be used
23 for any purpose other than as specified in this section in the absence
24 of a court order requiring such image to be produced.

25 (d) The city of New York shall adopt and enforce measures to protect
26 the privacy of drivers, passengers, or the contents of the vehicle whose
27 identity and identifying information may be captured by a weigh in
28 motion system, provided, however, that no notice of liability issued
29 pursuant to this section shall be dismissed solely because an image
30 produced by a weigh in motion system allows for the identification of
31 the driver, the passengers, or the contents of a vehicle. Such protec-
32 tive measures shall include:

33 (i) a prohibition on the use or dissemination of vehicles' license
34 plate information and other information and images captured by weigh in
35 motion systems except: (A) as required to establish liability under this
36 section or collect payment of penalties; (B) as required by court order;
37 (C) as required pursuant to a search warrant issued in accordance with
38 the criminal procedure law or a subpoena; or (D) as otherwise required
39 by law;

40 (ii) the installation of signage in advance of entry points to desig-
41 ated areas stating that weigh in motion systems are used to enforce
42 vehicle weight restrictions; and

43 (iii) oversight procedures to ensure compliance with the aforemen-
44 tioned privacy protection measures.

45 (e) The weigh in motion system shall undergo a calibration check every
46 six months in accordance with the specifications of ASTM E1318-09
47 (2017). If such standard is revised, the New York city department of
48 transportation may adopt a rule to provide for the use of the most
49 current version of such specifications. Such calibration check shall be
50 performed by an independent calibration laboratory which shall issue a
51 certificate of calibration on the letterhead of the independent cali-
52 bration laboratory that performed such calibration check. The city shall
53 keep each such certificate of calibration on file until the final resol-
54 ution of all cases involving a notice of liability issued during such
55 six-month time period which were based on photographs, microphotographs,

1 videotape or other recorded images or data produced by such weigh in
2 motion system.

3 (f) The weigh in motion systems used in accordance with the weigh in
4 motion system program shall only be operated on interstate route 278
5 within Kings county.

6 3. If the city of New York has established a weigh in motion system
7 program pursuant to subdivision two of this section, the owner of a
8 vehicle shall be liable for a penalty imposed pursuant to this section
9 if such vehicle was used or operated with the permission of the owner,
10 express or implied, in violation of any vehicle weight restrictions that
11 apply to such vehicle, where such vehicle was traveling ten percent
12 above the gross vehicle weight and/or twenty percent above the axle
13 weight at the time of such violation, and such violation is evidenced by
14 information obtained from a weigh in motion system; provided, however,
15 that no owner of a vehicle shall be liable for a penalty imposed pursu-
16 ant to this section where the operator of such vehicle has been
17 convicted of the underlying violation of any vehicle weight
18 restrictions.

19 4. A certificate, sworn to or affirmed by a technician employed or
20 contracted by the city of New York, or a facsimile thereof, based upon
21 inspection of photographs, microphotographs, videotape or other recorded
22 images or data produced by a weigh in motion system, shall be prima
23 facie evidence of the facts contained therein. Subject to paragraph (c)
24 of subdivision seven of this section, any photographs, microphotographs,
25 videotape or other recorded images or data evidencing such a violation
26 shall be available for inspection in any proceeding to adjudicate the
27 liability for such violation pursuant to this section.

28 5. An owner liable for a violation in accordance with this section
29 shall be liable for monetary penalties in accordance with a schedule of
30 finest and penalties promulgated by the parking violations bureau of the
31 city of New York; provided, however, that the monetary penalty shall not
32 exceed one thousand dollars; provided, further, that an owner shall be
33 liable for an additional penalty not to exceed twenty-five dollars for
34 each violation for the failure to respond to a notice of liability with-
35 in the prescribed time period.

36 6. An imposition of liability pursuant to this section shall not be
37 deemed a conviction of an operator and shall not be made part of the
38 operating record of the person upon whom such liability is imposed, nor
39 shall it be used for insurance purposes in the provision of motor vehi-
40 cle insurance coverage.

41 7. (a) A notice of liability shall be sent by first class mail to each
42 person alleged to be liable as an owner for a violation of this section.
43 Personal delivery to the owner shall not be required. A manual or auto-
44 matic record of mailing prepared in the ordinary course of business
45 shall be prima facie evidence of the facts contained therein.

46 (b) A notice of liability shall contain the name and address of the
47 person alleged to be liable as an owner, the United States department of
48 transportation registration number of the vehicle involved in such
49 violation, the license plate number of the vehicle involved in such
50 violation, the gross vehicle weight and/or axle weight, the location
51 where such violation took place, one or more images identifying the
52 violation, the date and time of such violation and the identification
53 number of the weigh in motion system which recorded the violation or
54 other document locator number.

55 (c) The notice of liability shall contain information advising the
56 person charged of the manner and the time in which he or she may contest

1 the liability alleged in the notice. Such notice of liability shall also
2 contain a warning to advise the person charged that failure to contest
3 in the manner and time provided shall be deemed an admission of liabil-
4 ity and that a default judgment may be entered thereon.

5 (d) The notice of liability shall be prepared and mailed by the agency
6 or agencies designated by the city of New York, or any other entity
7 authorized by such city to prepare and mail such notification of
8 violation.

9 (e) Adjudication of the liability imposed upon owners by this section
10 shall be by the New York city parking violations bureau. Such parking
11 violations bureau shall have jurisdiction over the program established
12 by this section. Adjudication of notices of liability issued pursuant
13 to this section shall be subject to the same provisions of article two-B
14 of this chapter relating to adjudication of parking violations and to
15 rules promulgated by the New York city parking violations bureau relat-
16 ing to the adjudication of such notices of liability, except that the
17 term "notice of violation" as defined in paragraph f of subdivision one
18 of section two hundred thirty-nine of this chapter shall not include a
19 notice of liability issued pursuant to this section.

20 8. If an owner of a vehicle receives a notice of liability pursuant to
21 this section for any time period during which such vehicle was reported
22 to the police department as having been stolen, it shall be a valid
23 defense to an allegation of liability for a violation of the weigh in
24 motion system program that the vehicle had been reported to the police
25 as stolen prior to the time the violation occurred and had not been
26 recovered by such time. For purposes of asserting the defense provided
27 by this subdivision it shall be sufficient that a certified copy of the
28 police report on the stolen vehicle be sent by first class mail to the
29 parking violations bureau of such city.

30 9. If the city of New York adopts a demonstration program pursuant to
31 subdivision two of this section it shall conduct a study and post on the
32 New York city department of transportation website a report on the
33 results of the use of weigh in motion systems. Such report shall
34 include:

35 (a) the locations where and dates when weigh in motion systems were
36 used;

37 (b) the number of violations recorded in accordance with the weigh in
38 motion system program, in the aggregate on a daily, weekly and monthly
39 basis;

40 (c) the number of violations recorded within the weigh in motion
41 system program that were either ten percent above the gross vehicle
42 weight or twenty percent above the axle weight;

43 (d) the total number of notices of liability issued for violations
44 recorded by weigh in motion systems;

45 (e) the number of fines and total amount of fines paid after the first
46 notice liability issued for violations recorded by weigh in motion
47 systems;

48 (f) the number of violations adjudicated and the results of such adju-
49 dications including breakdowns of dispositions made for violations
50 recorded by weigh in motion systems;

51 (g) the total amount of revenue realized by the city of New York in
52 connection with the program;

53 (h) the expenses incurred by the city of New York in connection with
54 the program; and

55 (i) the quality of the adjudication process and its results.

1 § 2. Section 237 of the vehicle and traffic law is amended by adding a
2 new subdivision 17 to read as follows:

3 17. To adjudicate the liability of owners for violations of section
4 three hundred eighty-five of this chapter and applicable rules of the
5 department of transportation of the city of New York in accordance with
6 section three hundred eighty-five-a of this chapter, and to have juris-
7 diction over the program established pursuant to such section.

8 § 3. Subdivision 2 of section 87 of the public officers law is amended
9 by adding a new paragraph (r) to read as follows:

10 (r) are photographs, microphotographs, videotape or other recorded
11 images or data prepared under authority of section three hundred eight-
12 y-five-a of the vehicle and traffic law.

13 § 4. The New York city department of transportation shall: (i) prior
14 to implementing a weigh in motion system program as authorized by
15 section 385-a of the vehicle and traffic law, as added by section one of
16 this act, communicate to the public the plan for vehicle weight
17 restrictions so as to maximize awareness of such program; (ii) for 90
18 days after the effective date of section 385-a of the vehicle and traf-
19 fic law, as added by section one of this act, in lieu of issuing notices
20 of liability pursuant to such section 385-a, send by first class mail,
21 to persons found in violation of such section, notice of this law and
22 that the vehicle owned by the person receiving such notice has been
23 found to be in violation of such section, together with a warning that
24 further violations may result in the issuance of a notice of liability
25 pursuant to such section 385-a; and (iii) take such measures as are
26 necessary to implement such program prior to its implementation, includ-
27 ing promulgating any rules and regulations necessary for the implementa-
28 tion of this act. Failure to comply with the provisions of this section
29 shall not affect the validity or implementation of the program author-
30 ized by section 385-a of the vehicle and traffic law, as added by
31 section one of this act.

32 § 5. (a) This act shall take effect immediately and shall expire and
33 be deemed repealed five years after such date.

34 (b) Notwithstanding the expiration and repeal of this act, any notices
35 of liability issued pursuant to section three hundred eighty-five-a of
36 the vehicle and traffic law, as added by section one of this act, prior
37 to the expiration date of this act may be adjudicated after such expira-
38 tion date.