

STATE OF NEW YORK

8128--A

IN SENATE

March 23, 2020

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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.

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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 up to
11 thirty weigh in motion systems on interstate route 278 in such county.
12 Such systems may be stationary or mobile and shall be activated at
13 locations determined 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 utilize necessary technologies to ensure, to
26 the extent practicable, that any license plate information or other
27 information or images captured by weigh in motion systems shall not
28 include images that identify the driver, the passengers, or the contents
29 of the vehicle. Provided, however, that no notice of liability issued
30 pursuant to this section shall be dismissed solely because any informa-
31 tion or images captured by such weigh in motion systems allows for the
32 identification of the driver, the passengers, or the contents of a vehi-
33 cle where the city shows that it made reasonable efforts to comply with
34 the provisions of this paragraph in such case.

35 (e) The city of New York shall further adopt and enforce measures to
36 protect the privacy of drivers, passengers, and the contents of the
37 vehicle whose identity and identifying information may be captured by a
38 weigh in motion system, provided, however, that no notice of liability
39 issued pursuant to this section shall be dismissed solely because an
40 image produced by a weigh in motion system allows for the identification
41 of the driver, the passengers, or the contents of a vehicle. Such
42 protective measures shall include:

43 (i) Providing that any license plate information or other information
44 or image captured by a weigh in motion system shall be for the exclusive
45 use of the city for the purpose of the adjudication of liability imposed
46 pursuant to this section and of the owner receiving a notice of liabil-
47 ity pursuant to this section, and shall be destroyed by the city upon
48 the final resolution of the notice of liability to which such informa-
49 tion or images relate, or one year following the date of issuance of
50 such notice of liability, whichever is later. Notwithstanding the
51 provisions of any other law, rule or regulation to the contrary, any
52 license plate information or other information or image captured by a
53 weigh in motion system shall not be open to the public, nor subject to
54 civil or criminal process of discovery, nor used by any court or admin-
55 istrative or adjudicatory body in any action or proceeding therein
56 except that which is necessary for the adjudication of a notice of

1 liability issued pursuant to this section, and no public entity or
2 employee, officer or agent thereof shall disclose such information,
3 except: (A) that such license plate information or other information or
4 image shall be available for inspection and copying and use by the motor
5 vehicle owner and operator for so long as such photographs, microphoto-
6 graphs, videotape or other recorded images are required to be maintained
7 or are maintained by such public entity, employee, officer or agent; (B)
8 as required to establish liability under this section or collect payment
9 of penalties; (C) as required by court order; (D) as required pursuant
10 to a search warrant issued in accordance with the criminal procedure law
11 or a subpoena; (E) as required by the New York city department of trans-
12 portation to study the impact of overweight vehicles on interstate route
13 278 in Kings county and management of infrastructure; or (F) as other-
14 wise required by law.

15 (ii) the installation of signage in advance of entry points to desig-
16 nated areas stating that weigh in motion systems are used to enforce
17 vehicle weight restrictions; and

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

20 (f) (i) The weigh in motion system shall undergo a calibration check
21 every six months in accordance with the specifications of ASTM E1318-09
22 (2017). If such standard is revised, the New York city department of
23 transportation may adopt a rule to provide for the use of the most
24 current version of such specifications. Such calibration check shall be
25 performed by an independent calibration laboratory which shall issue a
26 certificate of calibration on the letterhead of the independent cali-
27 bration laboratory that performed such calibration check. The city shall
28 keep each such certificate of calibration on file until the final resol-
29 ution of all cases involving a notice of liability issued during such
30 six-month time period which were based on photographs, microphotographs,
31 videotape or other recorded images or data produced by such weigh in
32 motion system.

33 (ii) The New York city department of transportation shall establish a
34 range, according to the manufacturer's standards and its monitoring of
35 the system, for evaluating data collected from sensor readings of the
36 system. The system shall be set to automatically alert the department of
37 significant variations from the established range during a twenty-four-
38 hour period. The system shall be inspected after each alert and any
39 necessary adjustments shall be made. A log shall be kept of the details
40 of all alerts, including the date and time and adjustments made or
41 actions taken as a result of the subsequent inspection.

42 (g) The weigh in motion systems used in accordance with the weigh in
43 motion system program shall only be operated on interstate route 278
44 within Kings county.

45 3. If the city of New York has established a weigh in motion system
46 program pursuant to subdivision two of this section, the owner of a
47 vehicle shall be liable for a penalty imposed pursuant to this section
48 if such vehicle was used or operated with the permission of the owner,
49 express or implied, in violation of any vehicle weight restrictions that
50 apply to such vehicle, where such vehicle was traveling ten percent
51 above the gross vehicle weight or twenty percent above the axle weight
52 at the time of such violation, and such violation is evidenced by infor-
53 mation obtained from a weigh in motion system; provided, however, that
54 no owner of a vehicle shall be liable for a penalty imposed pursuant to
55 this section where the operator of such vehicle has been convicted of
56 the underlying violation of any vehicle weight restrictions. Where a

1 vehicle is in violation of both gross vehicle weight restrictions and
2 axle weight restrictions the owner shall be liable for a separate penal-
3 ty for each violation.

4 4. A certification made under the penalty of perjury by a technician
5 employed or contracted by the city of New York, or a facsimile thereof,
6 based upon inspection of photographs, microphotographs, videotape or
7 other recorded images or data produced by a weigh in motion system,
8 shall be prima facie evidence of the facts contained therein. Subject
9 to paragraph (c) of subdivision seven of this section, any photographs,
10 microphotographs, videotape or other recorded images or data evidencing
11 such a violation shall be available for inspection in any proceeding to
12 adjudicate the liability for such violation pursuant to this section.

13 5. An owner liable for a violation in accordance with this section
14 shall be liable for monetary penalties in accordance with separate sche-
15 dules of fines and penalties promulgated by the parking violations
16 bureau of the city of New York for violation of gross vehicle weight
17 restrictions and for violation of axle weight restrictions; provided,
18 however, that the monetary penalty shall not exceed one thousand dollars
19 for each violation; provided, further, that an owner shall be liable for
20 an additional penalty not to exceed twenty-five dollars for each
21 violation for the failure to respond to a notice of liability within the
22 prescribed time period.

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

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

33 (b) A notice of liability shall contain the name and address of the
34 person alleged to be liable as an owner, the United States department of
35 transportation registration number of the vehicle involved in such
36 violation, the license plate number of the vehicle involved in such
37 violation, the gross vehicle weight and/or axle weight, the location
38 where such violation took place, one or more images identifying the
39 violation, the date and time of such violation and the identification
40 number of the weigh in motion system which recorded the violation or
41 other document locator number.

42 (c) The notice of liability shall contain information advising the
43 person charged of the manner and the time in which he or she may contest
44 the liability alleged in the notice. Such notice of liability shall also
45 contain a warning to advise the person charged that failure to contest
46 in the manner and time provided shall be deemed an admission of liabil-
47 ity and that a default judgment may be entered thereon.

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

52 (e) Adjudication of the liability imposed upon owners by this section
53 shall be by the New York city parking violations bureau. Such parking
54 violations bureau shall have jurisdiction over the program established
55 by this section. Adjudication of notices of liability issued pursuant
56 to this section shall be subject to the same provisions of article two-B

1 of this chapter relating to adjudication of parking violations and to
2 rules promulgated by the New York city parking violations bureau relat-
3 ing to the adjudication of such notices of liability, except that the
4 term "notice of violation" as defined in paragraph f of subdivision one
5 of section two hundred thirty-nine of this chapter shall not include a
6 notice of liability issued pursuant to this section.

7 8. If an owner of a vehicle receives a notice of liability pursuant to
8 this section for any time period during which such vehicle was reported
9 to the police department as having been stolen, it shall be a valid
10 defense to an allegation of liability for a violation of the weigh in
11 motion system program that the vehicle had been reported to the police
12 as stolen prior to the time the violation occurred and had not been
13 recovered by such time. For purposes of asserting the defense provided
14 by this subdivision it shall be sufficient that a certified copy of the
15 police report on the stolen vehicle be sent by first class mail to the
16 parking violations bureau of such city.

17 9. If the city of New York adopts a demonstration program pursuant to
18 subdivision two of this section it shall conduct a study and post on the
19 New York city department of transportation website an annual report on
20 the results of the use of weigh in motion systems on or about June first
21 two thousand twenty-two and on the same date in each succeeding year in
22 which the demonstration program is operable. Such report shall include:

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

25 (b) the total number of trucks weighed and the number of violations
26 recorded in accordance with the weigh in motion system program, in the
27 aggregate on a daily, weekly and monthly basis;

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

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

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

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

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

41 (h) the expenses incurred by the city of New York in connection with
42 the program;

43 (i) the quality of the adjudication process and its results; and

44 (j) the total capital amount spent on repair or reconstruction of
45 interstate route 278 in Kings county and the total capital amount spent
46 on repair or reconstruction of interstate route 278 specifically from
47 the vicinity of Atlantic avenue to the vicinity of Sands street in Kings
48 county.

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

51 17. To adjudicate the liability of owners for violations of section
52 three hundred eighty-five of this chapter and applicable rules of the
53 department of transportation of the city of New York in accordance with
54 section three hundred eighty-five-a of this chapter, and to have juris-
55 isdiction over the program established pursuant to such section.

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

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

6 § 4. The New York city department of transportation shall: (i) prior
7 to implementing a weigh in motion system program as authorized by
8 section 385-a of the vehicle and traffic law, as added by section one of
9 this act, communicate to the public the plan for vehicle weight
10 restrictions so as to maximize awareness of such program; (ii) for 90
11 days after the effective date of section 385-a of the vehicle and traf-
12 fic law, as added by section one of this act, in lieu of issuing notices
13 of liability pursuant to such section 385-a, send by first class mail,
14 to persons found in violation of such section, notice of this law and
15 that the vehicle owned by the person receiving such notice has been
16 found to be in violation of such section, together with a warning that
17 further violations may result in the issuance of a notice of liability
18 pursuant to such section 385-a; and (iii) take such measures as are
19 necessary to implement such program prior to its implementation, includ-
20 ing promulgating any rules and regulations necessary for the implementa-
21 tion of this act.

22 § 5. (a) This act shall take effect immediately and shall expire and
23 be deemed repealed three years after the first notice of liability
24 issued for violations recorded by weigh in motion systems; provided that
25 the New York city department of transportation shall notify the legisla-
26 tive bill drafting commission upon the issuance of the first notice of
27 liability for violations recorded by a weigh in motion system in accord-
28 ance with section 385-a of the vehicle and traffic law, as added by
29 section one of this act, in order that the commission may maintain an
30 accurate and timely effective data base of the official text of the laws
31 of the state of New York in furtherance of effecting the provisions of
32 section 44 of the legislative law and section 70-b of the public offi-
33 cers law.

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.