

# STATE OF NEW YORK

8128

## 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

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:

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

3 § 385-a. Owner liability for violation of certain weight restrictions  
4 on interstate route 278 in Kings county. 1. For purposes of this  
5 section, the following terms shall have the following meanings:

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

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

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

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

22 2. (a) Notwithstanding any other provision of law, the city of New  
23 York is hereby authorized and empowered to establish a demonstration  
24 weigh in motion system program on interstate route 278 in Kings county

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

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

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

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

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

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

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

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

42 (e) The weigh in motion system shall undergo a calibration check every  
43 six months in accordance with the specifications of ASTM E1318-09  
44 (2017). If such standard is revised, the New York city department of  
45 transportation may adopt a rule to provide for the use of the most  
46 current version of such specifications. Such calibration check shall be  
47 performed by an independent calibration laboratory which shall issue a  
48 certificate of calibration on the letterhead of the independent cali-  
49 bration laboratory that performed such calibration check. The city shall  
50 keep each such certificate of calibration on file until the final resolu-  
51 tion of all cases involving a notice of liability issued during such  
52 six-month time period which were based on photographs, microphotographs,  
53 videotape or other recorded images or data produced by such weigh in  
54 motion system.

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

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

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

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

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

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

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

53     (c) The notice of liability shall contain information advising the  
54 person charged of the manner and the time in which he or she may contest  
55 the liability alleged in the notice. Such notice of liability shall also  
56 contain a warning to advise the person charged that failure to contest

1 in the manner and time provided shall be deemed an admission of liability  
2 and that a default judgment may be entered thereon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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