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

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

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

(d) The city of New York utilize necessary technologies to ensure, to the extent practicable, that any license plate information or other information or images captured by weigh in motion systems shall not include images that identify the driver, the passengers, or the contents of the vehicle. Provided, however, that no notice of liability issued pursuant to this section shall be dismissed solely because any information or images captured by such weigh in motion systems allows for the identification of the driver, the passengers, or the contents of a vehicle where the city shows that it made reasonable efforts to comply with the provisions of this paragraph in such case.

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

(i) Providing that any license plate information or other information or image captured by a weigh in motion system shall be for the exclusive use of the city for the purpose of the adjudication of liability imposed pursuant to this section and of the owner receiving a notice of liability pursuant to this section, and shall be destroyed by the city upon the final resolution of the notice of liability to which such information or images relate, or one year following the date of issuance of such notice of liability, whichever is later. Notwithstanding the provisions of any other law, rule or regulation to the contrary, any license plate information or other information or image captured by a weigh in motion system shall not be open to the public, nor subject to civil or criminal process of discovery, nor used by any court or administrative or adjudicatory body in any action or proceeding therein except that which is necessary for the adjudication of a notice of

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

(ii) the installation of signage in advance of entry points to designated areas stating that weigh in motion systems are used to enforce vehicle weight restrictions; and

(iii) oversight procedures to ensure compliance with the aforementioned privacy protection measures.

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

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

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

3. If the city of New York has established a weigh in motion system program pursuant to subdivision two of this section, the owner of a vehicle shall be liable for a penalty imposed pursuant to this section if such vehicle was used or operated with the permission of the owner, express or implied, in violation of any vehicle weight restrictions that apply to such vehicle, where such vehicle was traveling ten percent above the gross vehicle weight or twenty percent above the axle weight at the time of such violation, and such violation is evidenced by information obtained from a weigh in motion 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 any vehicle weight restrictions. Where a

vehicle is in violation of both gross vehicle weight restrictions and axle weight restrictions the owner shall be liable for a separate penalty for each violation.

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

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

6. An imposition of liability pursuant to this section shall not be deemed a conviction of 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.

7. (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 this section. Personal delivery to 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, the United States department of transportation registration number of the vehicle involved in such violation, the license plate number of the vehicle involved in such violation, the gross vehicle weight and/or axle weight, the location where such violation took place, one or more images identifying the violation, the date and time of such violation and the identification number of the weigh in motion system 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 person 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 agency or agencies designated by the city of New York, or any other entity authorized by such city to prepare and mail such notification of violation.

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

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

8. If an owner of a vehicle receives a notice of liability pursuant to this section for any time period during which such 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 the weigh in motion system program 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 parking violations bureau of such city.

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

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

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

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

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

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

(f) the number of violations adjudicated and the results of such adjudications including breakdowns of dispositions made for violations recorded by weigh in motion systems;

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

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

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

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

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

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

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

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

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

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

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