

STATE OF NEW YORK

2740--A

2021-2022 Regular Sessions

IN SENATE

January 25, 2021

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.

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

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

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

17 (b) The New York state department of transportation may enter into a
18 memorandum of understanding together with the New York city department
19 of transportation for the purposes of coordinating the planning, design,
20 installation, construction and maintenance of the weigh in motion system
21 program. Such memorandum shall address the use of systems, devices, and
22 other facilities owned and operated by the state for the purposes of
23 such program.

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

27 (d)(i) Such demonstration program shall utilize necessary technologies
28 to ensure, to the extent practicable, that photographs, microphoto-
29 graphs, videotape or other recorded images, any license plate informa-
30 tion or other information produced by weigh in motion systems shall not
31 include images that identify the driver, the passengers, or the contents
32 of the vehicle. Provided, however, that no notice of liability issued
33 pursuant to this section shall be dismissed solely because such a photo-
34 graph, microphotograph, videotape or other recorded image allows for
35 the identification of the driver, the passengers, or the contents of
36 vehicles where the city shows that it made reasonable efforts to comply
37 with the provisions of this paragraph in such case.

38 (ii) Photographs, microphotographs, videotape or any other recorded
39 image, any license plate information or other information produced by
40 weigh in motion systems shall be for the exclusive use of the city for
41 the purpose of the adjudication of liability imposed pursuant to this
42 section, of the owner receiving a notice of liability pursuant to this
43 section, and as required by the New York city department of transporta-
44 tion to study the impact of overweight vehicles on interstate route 278
45 in Kings county and management of infrastructure, and shall be destroyed
46 by the city upon the final resolution of the notice of liability to
47 which such photographs, microphotographs, videotape or other recorded
48 images relate, or one year following the date of issuance of such notice
49 of liability, whichever is later.

50 (iii) Notwithstanding the provisions of any other law, rule or regu-
51 lation to the contrary, photographs, microphotographs, videotape or any
52 other recorded image from a weigh in motion system shall not be open to
53 the public, nor subject to civil or criminal process or discovery, nor
54 used by any court or administrative or adjudicatory body in any action
55 or proceeding therein except that which is necessary for the adjudi-
56 cation of a notice of liability issued pursuant to this section, and no

1 public entity or employee, officer or agent thereof shall disclose such
2 information, except that such photographs, microphotographs, videotape
3 or any other recorded images from such systems:

4 (A) 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; and

8 (B)(1) shall be furnished when described in a search warrant issued
9 by a court authorized to issue such a search warrant pursuant to article
10 six hundred ninety of the criminal procedure law or a federal court
11 authorized to issue such a search warrant under federal law, where such
12 search warrant states that there is reasonable cause to believe such
13 information constitutes evidence of, or tends to demonstrate that, a
14 misdemeanor or felony offense was committed in this state or another
15 state, or that a particular person participated in the commission of a
16 misdemeanor or felony offense in this state or another state, provided,
17 however, that if such offense was against the laws of another state, the
18 court shall only issue a warrant if the conduct comprising such offense
19 would, if occurring in this state, constitute a misdemeanor or felony
20 against the laws of this state; and

21 (2) shall be furnished in response to a subpoena duces tecum signed by
22 a judge of competent jurisdiction and issued pursuant to article six
23 hundred ten of the criminal procedure law or a judge or magistrate of a
24 federal court authorized to issue such a subpoena duces tecum under
25 federal law, where the judge finds and the subpoena states that there is
26 reasonable cause to believe such information is relevant and material to
27 the prosecution, or the defense, or the investigation by an authorized
28 law enforcement official, of the alleged commission of a misdemeanor or
29 felony in this state or another state, provided, however, that if such
30 offense was against the laws of another state, such judge or magistrate
31 shall only issue such subpoena if the conduct comprising such offense
32 would, if occurring in this state, constitute a misdemeanor or felony in
33 this state; and

34 (3) may, if lawfully obtained pursuant to this clause and clause (A)
35 of this subparagraph and otherwise admissible, be used in such criminal
36 action or proceeding.

37 (iv) Signage in advance of entry points to designated areas shall be
38 installed, stating that weigh in motion systems are being used to
39 enforce vehicle weight restrictions; and

40 (v) Oversight procedures shall be used to ensure compliance with the
41 privacy protection provisions of this paragraph.

42 (e) (i) The weigh in motion system shall undergo a calibration check
43 every 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.

55 (ii) The New York city department of transportation shall establish a
56 range, according to the manufacturer's standards and its monitoring of

1 the system, for evaluating data collected from sensor readings of the
2 system. The system shall be set to automatically alert the department of
3 significant variations from the established range during a twenty-four-
4 hour period. The system shall be inspected after each alert and any
5 necessary adjustments shall be made. A log shall be kept of the details
6 of all alerts, including the date and time and adjustments made or
7 actions taken as a result of the subsequent inspection.

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

11 3. If the city of New York has established a weigh in motion system
12 program pursuant to subdivision two of this section, the owner of a
13 vehicle shall be liable for a penalty imposed pursuant to this section
14 if such vehicle was used or operated with the permission of the owner,
15 express or implied, in violation of any vehicle weight restrictions that
16 apply to such vehicle, where such vehicle was traveling ten percent
17 above the gross vehicle weight or twenty percent above the axle weight
18 at the time of such violation, and such violation is evidenced by infor-
19 mation obtained from a weigh in motion system; provided, however, that
20 no owner of a vehicle shall be liable for a penalty imposed pursuant to
21 this section where the operator of such vehicle has been convicted of
22 the underlying violation of any vehicle weight restrictions. Where a
23 vehicle is in violation of both gross vehicle weight restrictions and
24 axle weight restrictions the owner shall be liable for a separate penal-
25 ty for each violation.

26 4. A certification, sworn to or affirmed by a technician employed or
27 contracted by the city of New York, or a facsimile thereof, based upon
28 inspection of photographs, microphotographs, videotape or other recorded
29 images produced by a weigh in motion system, shall be prima facie
30 evidence of the facts contained therein. Nothing in this subdivision is
31 intended to require the signature of a notary public on the certificate
32 of a technician. Subject to paragraph (c) of subdivision seven of this
33 section, any photographs, microphotographs, videotape or other recorded
34 images or data evidencing such a violation shall be available for
35 inspection in any proceeding to adjudicate the liability for such
36 violation pursuant to this section.

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

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

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

1 (b) A notice of liability shall contain the name and address of the
2 person alleged to be liable as an owner, the United States department of
3 transportation registration number of the vehicle involved in such
4 violation, the license plate number of the vehicle involved in such
5 violation, the gross vehicle weight and/or axle weight, the location
6 where such violation took place, one or more images identifying the
7 violation, the date and time of such violation and the identification
8 number of the weigh in motion system which recorded the violation or
9 other document locator number.

10 (c) The notice of liability shall contain information advising the
11 person charged of the manner and the time in which he or she may contest
12 the liability alleged in the notice. Such notice of liability shall also
13 contain a warning to advise the person charged that failure to contest
14 in the manner and time provided shall be deemed an admission of liabil-
15 ity and that a default judgment may be entered thereon.

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

20 (e) Adjudication of the liability imposed upon owners by this section
21 shall be by the New York city parking violations bureau. Such parking
22 violations bureau shall have jurisdiction over the program established
23 by this section. Adjudication of notices of liability issued pursuant
24 to this section shall be subject to the same provisions of article two-B
25 of this chapter relating to adjudication of parking violations and to
26 rules promulgated by the New York city parking violations bureau relat-
27 ing to the adjudication of such notices of liability, except that the
28 term "notice of violation" as defined in paragraph f of subdivision one
29 of section two hundred thirty-nine of this chapter shall not include a
30 notice of liability issued pursuant to this section.

31 8. If an owner of a vehicle receives a notice of liability pursuant to
32 this section for any time period during which such vehicle was reported
33 to the police department as having been stolen, it shall be a valid
34 defense to an allegation of liability for a violation of the weigh in
35 motion system program that the vehicle had been reported to the police
36 as stolen prior to the time the violation occurred and had not been
37 recovered by such time. For purposes of asserting the defense provided
38 by this subdivision it shall be sufficient that a certified copy of the
39 police report on the stolen vehicle be sent by first class mail to the
40 parking violations bureau of such city.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 § 5. (a) This act shall take effect immediately and shall expire and
48 be deemed repealed three years after the first notice of liability
49 issued for violations recorded by weigh in motion systems; provided that
50 the New York city department of transportation shall notify the legisla-
51 tive bill drafting commission upon the issuance of the first notice of
52 liability for violations recorded by a weigh in motion system in accord-
53 ance with section 385-a of the vehicle and traffic law, as added by
54 section one of this act, in order that the commission may maintain an
55 accurate and timely effective data base of the official text of the laws
56 of the state of New York in furtherance of effecting the provisions of

1 section 44 of the legislative law and section 70-b of the public offi-
2 cers law.

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