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. 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.
(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.

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 may 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.

(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)(i) Such demonstration program shall utilize necessary technologies to ensure, to the extent practicable, that photographs, microphotographs, videotape or other recorded images, any license plate information or other information produced 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 such a photograph, microphotograph, videotape or other recorded image allows for the identification of the driver, the passengers, or the contents of vehicles where the city shows that it made reasonable efforts to comply with the provisions of this paragraph in such case.

(ii) Photographs, microphotographs, videotape or any other recorded image, any license plate information or other information produced by weigh in motion systems shall be for the exclusive use of the city for the purpose of the adjudication of liability imposed pursuant to this section, of the owner receiving a notice of liability pursuant to this section, and 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, and shall be destroyed by the city upon the final resolution of the notice of liability to which such photographs, microphotographs, videotape or other recorded images relate, or one year following the date of issuance of such notice of liability, whichever is later.

(iii) Notwithstanding the provisions of any other law, rule or regulation to the contrary, photographs, microphotographs, videotape or any other recorded image from a weigh in motion system shall not be open to the public, nor subject to civil or criminal process or 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 that such photographs, microphotographs, videotape
or any other recorded images from such systems:
   (A) shall be available for inspection and copying and use by the motor
vehicle owner and operator for so long as such photographs, microphoto-
graphs, videotape or other recorded images are required to be maintained
or are maintained by such public entity, employee, officer or agent; and
   (B)(1) shall be furnished when described in a search warrant issued
by a court authorized to issue such a search warrant pursuant to article
six hundred ninety of the criminal procedure law or a federal court
authorized to issue such a search warrant under federal law, where such
search warrant states that there is reasonable cause to believe such
information constitutes evidence of, or tends to demonstrate that, a
misdemeanor or felony offense was committed in this state or another
state, or that a particular person participated in the commission of a
misdemeanor or felony offense in this state or another state, provided,
however, that if such offense was against the laws of another state, the
court shall only issue a warrant if the conduct comprising such offense
would, if occurring in this state, constitute a misdemeanor or felony
against the laws of this state; and
   (2) shall be furnished in response to a subpoena duces tecum signed by
a judge of competent jurisdiction and issued pursuant to article six
hundred ten of the criminal procedure law or a judge or magistrate of a
federal court authorized to issue such a subpoena duces tecum under
federal law, where the judge finds and the subpoena states that there is
reasonable cause to believe such information is relevant and material to
the prosecution, or the defense, or the investigation by an authorized
law enforcement official, of the alleged commission of a misdemeanor or
felony in this state or another state, provided, however, that if such
offense was against the laws of another state, such judge or magistrate
shall only issue such subpoena if the conduct comprising such offense
would, if occurring in this state, constitute a misdemeanor or felony in
this state; and
   (3) may, if lawfully obtained pursuant to this clause and clause (A)
of this subparagraph and otherwise admissible, be used in such criminal
action or proceeding.
   (iv) Signage in advance of entry points to designated areas shall be
installed, stating that weigh in motion systems are being used to
enforce vehicle weight restrictions; and
   (v) Oversight procedures shall be used to ensure compliance with the
privacy protection provisions of this paragraph.
(e) (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 cali-
bration laboratory that performed such calibration check. The city shall
keep each such certificate of calibration on file until the final resol-
ution 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.
(f) 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 infor-
mation 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 penal-
ity for each violation.
4. A certification, sworn to or affirmed 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 produced by a weigh in motion system, shall be prima facie
evidence of the facts contained therein. Nothing in this subdivision is
intended to require the signature of a notary public on the certificate
of a technician. 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 sche-
dules 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 vehi-
cle 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 auto-
matic 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-three 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;
§ 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
(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.