

# STATE OF NEW YORK

6172

2021-2022 Regular Sessions

## IN SENATE

April 13, 2021

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to prohibiting the disabling, removal or interference with emission control devices; and to amend the environmental conservation law and the vehicle and traffic law, in relation to prohibiting the use of emission tampering devices and providing remedies for the violation of such provisions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act may be known and may be cited as the "emission  
2 tampering act of 2021".

3 § 2. Article 19 of the environmental conservation law is amended by  
4 adding a new title 13 to read as follows:

5 TITLE 13

6 EMISSION TAMPERING

7 Section 19-1301. Statement of findings.

8 19-1303. Definitions.

9 19-1305. Prohibitions.

10 19-1307. Emission inspections and reporting.

11 19-1309. Enforcement.

12 § 19-1301. Statement of findings.

13 1. Emission control devices installed by manufacturers of diesel-pow-  
14 ered heavy duty vehicles are essential to limiting the emission of air  
15 pollutants from such vehicles, protecting the public health from the  
16 adverse health effects of those pollutants, and maintaining the state's  
17 ability to meet the greenhouse gas reduction targets set forth in the  
18 climate change and community leadership act.

19 2. The United States environmental protection agency has determined  
20 that emission controls have been removed from over one-half million  
21 heavy duty vehicles in the last decade, resulting in more than one-half

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

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1 million tons of excess nitrogen oxides and five thousand tons of excess  
2 particulate matter being emitted from those vehicles.

3 3. The United States environmental protection agency has estimated  
4 that in New York more than thirteen thousand heavy duty vehicles have  
5 disabled or removed emission controls, resulting in excess emissions of  
6 over thirteen thousand tons of nitrogen oxides and over one hundred tons  
7 of particulate matter.

8 4. The tampering with, disabling, or removal of emission controls in  
9 diesel-powered motor vehicles poses a serious threat to the health of  
10 the citizens of New York state.

11 § 19-1303. Definitions.

12 As used in this title:

13 1. "Aftermarket defeat device" means a part or component intended for  
14 use with, or as part of, any motor vehicle or motor vehicle engine where  
15 a principal effect of the part or component is to bypass, defeat, alter  
16 or render inoperative any device or element of design installed on or in  
17 a motor vehicle or motor vehicle engine in compliance with any require-  
18 ment of the federal clean air act or of this title.

19 2. "Heavy duty vehicle" means a heavy duty vehicle as defined in  
20 subdivision one of section 19-0320 of this article.

21 3. "Motor vehicle" means a motor vehicle as defined in section one  
22 hundred twenty-five of the vehicle and traffic law.

23 4. "Tamper" means to remove or render inoperative or inaccurate any  
24 device or element of design installed on or in a motor vehicle or motor  
25 vehicle engine in compliance with any requirement of the federal clean  
26 air act or of this article.

27 § 19-1305. Prohibitions.

28 1. It shall be unlawful for any person to tamper with a motor vehicle.

29 2. No person shall sell, offer for sale or distribute an aftermarket  
30 defeat device.

31 3. It shall be unlawful for any person to possess, install or attempt  
32 to install an aftermarket defeat device.

33 4. A violation of this section shall be punishable by a civil penalty  
34 of not less than one thousand dollars and not more than five thousand  
35 dollars for the first violation and not less than two thousand and not  
36 more than ten thousand dollars for the second and each subsequent  
37 violation by the court or administrative tribunal before which the  
38 summons or appearance ticket is returnable.

39 § 19-1307. Emission inspections and reporting.

40 1. No later than one hundred eighty days after the effective date of  
41 this title, the department, jointly with the department of motor vehi-  
42 cles and department of transportation, shall modify the annual  
43 inspection and roadside program established by subdivision two of  
44 section 19-0320 of this article and the enhanced inspection and mainte-  
45 nance program governed by 6 NYCRR Part 217 to require that each vehicle  
46 is visually inspected for the presence of an aftermarket defeat device.

47 2. The owner or operator of a motor vehicle that, as a result of an  
48 inspection, is determined to have an aftermarket defeat device, shall  
49 remove or cause to be removed such device within ten business days of  
50 the date of the inspection and shall provide written proof of such  
51 removal in a form acceptable to the department, such proof to be submit-  
52 ted to the department within fifteen business days of the date of the  
53 inspection.

54 3. Failure by the owner or operator of a motor vehicle to remove or  
55 cause to be removed an aftermarket defeat device and provide written  
56 proof thereof to the department shall subject such person to a civil

1 penalty of not less than one thousand dollars and not more than five  
2 thousand dollars.

3 4. No later than one hundred eighty days after the effective date of  
4 this title, the department shall prepare and make available to vehicle  
5 emission inspection stations:

6 a. a written notice setting forth the removal and written proof  
7 requirements relating to aftermarket defeat devices and the penalties  
8 for failing to comply with such requirements for distribution to owners  
9 or operators of motor vehicles containing aftermarket defeat devices;  
10 and

11 b. a form constituting written proof of removal of an aftermarket  
12 defeat device.

13 5. Any person conducting an inspection of a motor vehicle who deter-  
14 mines that the vehicle contains an aftermarket defeat device shall  
15 promptly inform the owner or operator of the vehicle of the presence of  
16 the device and inform such owner or operator of the removal and written  
17 proof requirements of this section. Such information may be provided by  
18 written notice in such form as prepared by the department.

19 § 19-1309. Enforcement.

20 The department and the attorney general are hereby authorized to  
21 enforce the provisions of this title and all monies collected shall be  
22 deposited to the credit of the environmental protection fund established  
23 pursuant to section ninety-two-s of the state finance law. The  
24 provisions of section 19-1305 of this title may be enforced by a county,  
25 city, town or village provided the local legislative body thereof may  
26 adopt local laws, ordinances or regulations consistent with this title  
27 providing for the enforcement of such provisions.

28 § 3. Subdivision 28-a of section 375 of the vehicle and traffic law,  
29 as added by chapter 1026 of the laws of 1971, is amended to read as  
30 follows:

31 28-a. (a) Except as permitted or authorized by law, no person shall  
32 remove, dismantle or otherwise cause to be inoperative any equipment or  
33 feature constituting an operational element of a motor vehicle's air  
34 pollution control system or mechanism required by federal or state law  
35 or by any rules or regulations promulgated pursuant thereto.

36 (b) Except as permitted or authorized by law, no registered owner  
37 shall permit a motor vehicle fueled with diesel fuel to be operated with  
38 an aftermarket defeat device, nor shall a registered owner possess,  
39 install, or attempt to install an aftermarket defeat device.

40 (c) As used in this subdivision, "aftermarket defeat device" shall  
41 mean a part or component intended for use with, or as part of, any motor  
42 vehicle or motor vehicle engine where a principal effect of the part or  
43 component is to bypass, defeat, alter or render inoperative any device  
44 or element of design installed on or in a motor vehicle or motor vehicle  
45 engine in compliance with any requirement of the federal clean air act,  
46 the environmental conservation law, or of this article.

47 (d) A person convicted of a violation of this subdivision shall, for a  
48 first violation thereof with respect to a particular motor vehicle, be  
49 punished by a fine of seven hundred fifty dollars. Such fine may not be  
50 waived, suspended or in any other manner not levied, except that four  
51 hundred fifty dollars of such fine may be waived upon submission of  
52 acceptable evidence prior to the final determination of the violation  
53 that the air pollution control system or mechanism required by federal  
54 or state law or by any rules or regulations promulgated pursuant thereto  
55 has been restored on the vehicle and is in proper working condition. A  
56 person convicted of a second or subsequent violation with respect to a

1 particular vehicle shall be punished by a fine of seven hundred fifty  
2 dollars, which fine may not be waived, suspended or in any other manner  
3 not levied.

4 § 4. This act shall take effect on the thirtieth day after it shall  
5 have become a law. Effective immediately, the addition, amendment  
6 and/or repeal of any rule or regulation necessary for the implementation  
7 of this act on its effective date are authorized to be made and  
8 completed on or before such effective date.