STATE OF NEW YORK

2704

2023-2024 Regular Sessions

IN ASSEMBLY

January 26, 2023

Introduced by M. of A. CARROLL -- read once and referred 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:

Section 1. This act may be known and may be cited as the "emission tampering act of 2023".

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

TITLE 13

EMISSION TAMPERING

Section 19-1301. Statement of findings.
19-1303. Definitions.
19-1305. Prohibitions.
19-1307. Emission inspections and reporting.
19-1309. Enforcement.

§ 19-1301. Statement of findings.

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

2. The United States environmental protection agency has determined that emission controls have been removed from over one-half million 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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million tons of excess nitrogen oxides and five thousand tons of excess particulate matter being emitted from those vehicles.

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

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

§ 19-1303. Definitions.

As used in this title:

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

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

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

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

§ 19-1305. Prohibitions.

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

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

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

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

§ 19-1307. Emission inspections and reporting.

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

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

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

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

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

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

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

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

§ 19-1309. Enforcement.

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

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

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

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

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

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

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

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