

# STATE OF NEW YORK

2704--A

2023-2024 Regular Sessions

## IN ASSEMBLY

January 26, 2023

Introduced by M. of A. CARROLL, SIMONE, L. ROSENTHAL, ARDILA, SHIMSKY, KELLES, LEVENBERG -- Multi-Sponsored by -- M. of A. SIMON -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 shall be known and may be cited as the "emission  
2 tampering act".

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

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

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1 ability to meet the greenhouse gas reduction targets set forth in the  
2 climate change and community leadership act.

3 2. The United States environmental protection agency has determined  
4 that emission controls have been removed from over one-half million  
5 heavy duty vehicles in the last decade, resulting in more than one-half  
6 million tons of excess nitrogen oxides and five thousand tons of excess  
7 particulate matter being emitted from those vehicles.

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

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

16 § 19-1303. Definitions.

17 As used in this title:

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

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

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

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

32 § 19-1305. Prohibitions.

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

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

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

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

44 § 19-1307. Emission inspections and reporting.

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

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

1 ted to the department within fifteen business days of the date of the  
2 inspection.

3 3. Failure by the owner or operator of a motor vehicle to remove or  
4 cause to be removed an aftermarket defeat device and provide written  
5 proof thereof to the department shall subject such person to a civil  
6 penalty of not less than one thousand dollars and not more than five  
7 thousand dollars.

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

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

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

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

24 § 19-1309. Enforcement.

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

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

36 28-a. (a) Except as permitted or authorized by law, no person shall  
37 remove, dismantle or otherwise cause to be inoperative any equipment or  
38 feature constituting an operational element of a motor vehicle's air  
39 pollution control system or mechanism required by federal or state law  
40 or by any rules or regulations promulgated pursuant thereto.

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

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

52 (d) A person convicted of a violation of this subdivision shall, for a  
53 first violation thereof with respect to a particular motor vehicle, be  
54 punished by a fine of seven hundred fifty dollars. Such fine may not be  
55 waived, suspended or in any other manner not levied, except that four  
56 hundred fifty dollars of such fine may be waived upon submission of

1 acceptable evidence prior to the final determination of the violation  
2 that the air pollution control system or mechanism required by federal  
3 or state law or by any rules or regulations promulgated pursuant thereto  
4 has been restored on the vehicle and is in proper working condition. A  
5 person convicted of a second or subsequent violation with respect to a  
6 particular vehicle shall be punished by a fine of seven hundred fifty  
7 dollars, which fine may not be waived, suspended or in any other manner  
8 not levied.

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