

CHAPTER 203  
FORMERLY  
SENATE BILL NO. 131

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO SIZE AND WEIGHT OF VEHICLES AND LOADS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 45, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4513. Vehicle height monitoring system.

(a) Definitions. As used in this section:

(1) "County" means the 3 counties of this State: New Castle, Kent, and Sussex.

(2) "County law" means any legislative, administrative, or other law or policy implemented by the governing body of a county.

(3) "Driver" does not include an employee of the owner of a motor vehicle.

(4) "Municipal law" means any legislative, administrative, or other law or policy implemented by a municipality.

(5) "Municipality" includes all cities, towns, and villages created under any general or special law of this State for general governmental purpose and which possesses legislative, administrative, or police powers for the general exercise of municipal functions and carry on the functions through a set of elected and other officials.

(6) "Recorded image" means an image recorded by a vehicle height monitoring system and includes any of the following:

a. A photograph.

b. A microphotograph.

c. A digital image.

d. A video.

e. Any other medium used to store images or sounds to be seen or heard later.

(6) As used in this section, "road" means an open way for motor vehicles, and includes all of the following:

a. A Delaware byway, express highway, road, highway, or State highway, as those terms are defined under § 101 of this title.

b. A road, street, highway, roadway, or any similar term, as defined under a county or municipal law.

(7) "Vehicle height monitoring system" means a device with 1 or more motor vehicle sensors that is capable of producing a recorded image of a motor vehicle whose height exceeds a limit imposed under this title.

(b) Purpose. This section establishes the authority for the State or its counties or municipalities to use a vehicle height monitoring system to assist in the enforcement of applicable State, county, and municipal law regarding motor vehicle size, including under Chapter 45 of this title. This section does not establish a new violation.

(c) Applicability.

(1) This section does not apply to any of the following:

- a. An emergency vehicle.
- b. An authorized State vehicle or snow plow.
- c. A school bus.
- d. A vehicle for which an owner, an employee of an owner, or a driver provides proof that it is being used to make a delivery.
- e. A recreational vehicle.

(2) An employer, not the employer's employee, is liable under this section if a violation under this section occurs while an employee is using, for the purposes of employment, a vehicle that the employer owns.

(d) Initial implementation; responsible authority. A vehicle height monitoring system may be installed or used to record images of a motor vehicle traveling on a road in this State after the requirements of paragraph (d)(1) of this section and, if applicable, paragraph (d)(3) of this section, have been met.

(1) Within a year of [the date of enactment of this Act], the Department of Transportation shall do both of the following:

- a. Identify roads in this State as potential candidates for the placement of vehicle height monitoring systems.
- b. Conduct an analysis to determine the appropriateness of each location.

(2) After the requirements of paragraph (d)(1) of this section have been met, the Secretary of the Department of Safety and Homeland Security may approve and install a vehicle height monitoring system to be used on a road maintained by the State.

(3) A county or municipality may install and use a vehicle height monitoring system on a road maintained by the county or municipality after all of the following requirements have been met:

- a. Paragraph (d)(1) of this section.
- b. The county or municipality adopts an ordinance authorizing the use of a vehicle height monitoring system at a location identified as a potential candidate under paragraph (d)(1) of this section.
- c. The county or municipality publishes notice of each vehicle height monitoring system location in a newspaper of general circulation in the area in which the vehicle height monitoring system will be installed or used.
- d. All signs stating restrictions on the presence of certain motor vehicles during certain times approaching and within the segment of road on which the vehicle height monitoring system is located meet all of the following criteria:

- 1. Are in accordance with the Delaware Manual on Uniform Traffic Control Devices.

2. Indicate that a vehicle height monitoring system is in use.

(e) Vendor selection. The Department of Safety and Homeland Security shall utilize a supporting vendor to provide vehicle height monitoring systems for the State, counties, and municipalities. The system vendor must be selected through an open competitive procurement process which allows for the government and taxpayer to benefit from improved quality at lower pricing. To assure integrity and propriety, a person involved in the administration or enforcement of the vehicle height monitoring system may not own any interest or equity in the vendor used.

(f) Vehicle height monitoring system requirements and maintenance; daily set-up log.

(1) A vehicle height monitoring system must adhere to the motor vehicle size limits imposed by State, county, or municipal law.

(2) A daily log must be maintained for each vehicle height monitoring system installed and in use in this State. The Secretary of the Department of Public Safety and Homeland Security shall designate a vehicle height monitoring system technician to fulfill the requirements of paragraph (f)(3)a. for a vehicle height monitoring system installed on a State-maintained road. A county or municipality that has adopted an ordinance to install a vehicle height monitoring system shall designate a vehicle height monitoring system technician to fulfill the requirements of paragraph (f)(3)a. for a vehicle height monitoring system installed on a road maintained by the county or municipality.

(3) A vehicle height monitoring system technician shall do all of the following:

a. Fill out and sign a daily set-up log for each vehicle height monitoring system to which the vehicle height monitoring system technician is assigned. The log must do all of the following:

1. Include a statement that the technician successfully performed the manufacturer-specified self-test of the vehicle height monitoring system before producing a recorded image.

2. Be kept on file.

3. Be admitted as evidence in any court proceeding for the violation that the recorded image captured.

b. With the approval of a law-enforcement officer of the applicable jurisdiction, issue a violation notice and send the notice to the registered owner of the motor vehicle.

(g) Violation criteria. For a violation to occur, a motor vehicle must exceed a size limitation under this chapter or county or municipal law.

(h) Civil penalty. Unless a law-enforcement officer issued a citation to the owner or driver of the motor vehicle at the time of the violation, the owner or driver is subject to a civil penalty if a vehicle height monitoring system captures the owner's motor vehicle while violating State, county, or municipal law restricting the presence of certain vehicles at certain times. A civil penalty under this subsection may not exceed any of the following:

(1) For a first violation by the owner, an employee of the owner, or the driver of the motor vehicle, a mailed warning notice instead of a civil penalty. For purposes of this section, "first violation" means the owner, an employee of the owner, or the driver of the motor vehicle has not previously violated a State, county, or

municipal law restricting the presence of certain motor vehicles at certain times within 24 months before the date of the violation.

(2) For a second violation by the owner, an employee of the owner, or the driver of the motor vehicle, \$250.

(3) For third or subsequent violation by the owner, an employee of the owner, or the driver of the motor vehicle, \$500.

(i) Issuance of citation; contents; duty of recipient. The State, county, or municipality, whichever applies, shall, within 30 days of the violation, mail a notice of violation to the owner of a motor vehicle that was captured on a vehicle height monitoring system while violating a State, county, or municipal law restricting the presence of certain vehicles at certain times. The notice of violation must include all of the following:

a. The name and address of the registered owner of the motor vehicle.

b. The registration number of the motor vehicle involved in the violation.

c. The violation charged.

d. The location at which the violation occurred.

e. The date and time of the violation.

f. A copy of the recorded image of the motor vehicle.

g. The amount of the civil penalty imposed and the date by which the civil penalty must be paid.

h. A signed statement by a law enforcement officer of the applicable jurisdiction that, based on inspection of the recorded image, the motor vehicle was being operated in violation of a State, county, or municipal law restricting the presence of certain vehicles at certain times.

i. A statement that the recorded image is evidence of the violation.

j. Information advising the owner of the manner, time, and place by which liability as alleged in the notice may be contested.

k. Information warning the owner that failure to pay the civil penalty or contest liability in a timely manner is an admission of liability and may result in a judgment being entered against the owner or the denial of the registration or renewal of any of the owner's motor vehicles.

i. Notice that the owner's ability to rebut the presumption that the owner or an employee of the owner was the operator of the motor vehicle at the time of the alleged violation and the means for rebutting the presumption.

(j) Evidence; witnesses.

(1) A certificate alleging that a violation of a State, county, or municipal law restricting the presence of a certain motor vehicle during a certain time occurred and that the requirements under subsections (d) and (f) of this section have been met and affirmed by a duly authorized law-enforcement officer based on inspection of a recorded image produced by a vehicle height monitoring system is both of the following:

a. Evidence of the facts contained in the certificate.

b. Admissible in a proceeding alleging a violation under this section without the presence or testimony of the vehicle height monitoring system technician.

(2) A recorded image from a vehicle height monitoring system is evidence of a violation only if the image shows all of the following:

a. The front or side of a motor vehicle.

b. At least 2 time-stamped recorded images of the motor vehicle that include the same stationary object near the motor vehicle.

c. On at least 1 recorded image, a clear and legible identification of the entire registration plate number of the motor vehicle.

(3) If an owner or driver who received a notice of violation under this section desires the vehicle height monitoring system technician to be present and testify at trial, the owner or driver shall notify the court and the State, county, or municipality, whichever issued the notice of violation, in writing no later than 20 days before trial.

(4) Adjudication of liability is based on a preponderance of the evidence.

(k) Defenses.

(1) The court may consider in defense of a violation either of the following:

a. Subject to paragraph (k)(2) of this section, that the motor vehicle or the registration plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the owner, an employee of the owner, or the driver at the time of the violation.

b. Any other issue or evidence that the court deems pertinent.

(2) To demonstrate a defense under paragraph (k)(1) of this section, the owner or driver must submit proof that a police report regarding the stolen motor vehicle or registration plates was filed in a timely manner.

(l) Status of violation. A violation for which a civil penalty is imposed under this section is not a moving violation for the purpose of assessing points under § 2208, Title 2 of the Delaware Administrative Code, and may not be any of the following:

(1) Recorded on the driving record of the owner, an employee of the owner, or driver of the motor vehicle.

(2) Treated as a parking violation under State, county, or municipal law.

(3) Considered in the provision of motor vehicle insurance coverage.

(m) Adoption of procedures for issuance of citations. The Justice of the Peace Court, upon approval by the Chief Justice, may develop court rules, administrative directives, or other forms of policies for handling violations under this section.

(n) Administration and processing of citations.

(1) The State or a county or municipality, or a contractor designated by the State or a county or municipality, shall administer and process civil citations issued under this section in coordination with the court.

(2) If a contractor operates a vehicle height monitoring system on behalf of the State or a county or municipality, the contractor's fee may not be contingent on the number of citations issued or paid.

Approved August 15, 2019