S T A T E  O F  N E W  Y O R K

289

2009-2010 Regular Sessions

I N  S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to prohibiting the use of unmarked police vehicles

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The vehicle and traffic law is amended by adding a new section 1102-a to read as follows:

S 1102-A. USE OF UNMARKED POLICE VEHICLES PROHIBITED. (A) NOTWITHSTANDING ANY OTHER LAW, RULE, OR REGULATION TO THE CONTRARY, NO UNMARKED OR CONCEALED IDENTITY POLICE VEHICLE SHALL BE USED BY ANY POLICE OFFICER TO ROUTINELY STOP OR APPREHEND OPERATORS OF MOTOR VEHICLES FOR VIOLATIONS OF THIS CHAPTER, AND NO GOVERNMENTAL ENTITY SHALL REQUIRE OR PERMIT THE USE OF SUCH VEHICLES FOR SUCH PURPOSE, ON AND AFTER NOVEMBER FIRST, TWO THOUSAND TEN; PROVIDED, HOWEVER, THAT NOTHING CONTAINED IN THIS SECTION SHALL BE DEEMED TO PROHIBIT THE USE OF SUCH VEHICLES TO STOP OR APPREHEND OPERATORS OF MOTOR VEHICLES FOR SUCH OFFENSES, BUT ONLY UNDER CIRCUMSTANCES WHICH ARE EXCEPTIONAL, NECESSARY, AND WHICH PRESENT A SUBSTANTIAL THREAT TO PUBLIC SAFETY. A POLICE VEHICLE SHALL BE DEEMED TO BE UNMARKED OR HAVE A CONCEALED IDENTITY UNLESS IT IS EQUIPPED WITH: (I) LIGHTS AS AUTHORIZED BY SUBDIVISION FORTY-ONE OF SECTION THREE HUNDRED SEVENTY-FIVE OF THIS CHAPTER, WHICH ARE DISPLAYED AND VISIBLE; (II) A HORN, SIREN, ELECTRONIC DEVICE, OR EXHAUST WHISTLE FROM WHICH AUDIBLE SIGNALS ARE SOUNDED; AND (III) AN INSIGNIA IDENTIFYING SUCH VEHICLE AS A POLICE VEHICLE AS DEFINED BY THIS SECTION.

(B) WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION AND, UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTIN-

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

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UANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATIONS, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

(C) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS: "GOVERNMENTAL ENTITY" SHALL MEAN THE STATE, A PUBLIC AUTHORITY, A POLICE DISTRICT, A COUNTY, TOWN, CITY, OR VILLAGE; "POLICE OFFICER" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW; AND "POLICE VEHICLE" SHALL MEAN EVERY VEHICLE FOR WHICH THE STATE, A PUBLIC AUTHORITY, A POLICE DISTRICT, A COUNTY, TOWN, CITY, OR VILLAGE IS THE OWNER AND WHICH IS OPERATED BY THE POLICE DEPARTMENT OR LAW ENFORCEMENT AGENCY OF SUCH GOVERNMENTAL UNIT OR BY A CONSTABLE OR POLICE CONSTABLE OF A TOWN WHEN ACTING PURSUANT TO HIS OR HER SPECIAL DUTIES.

S 2. This act shall take effect immediately.