

2009-2010 Regular Sessions

I N S E N A T E

January 21, 2009

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

AN ACT to amend the executive law and the vehicle and traffic law, in relation to creating a traffic adjudication appeals bureau within the executive department, and repealing section 228 of the vehicle and traffic law, relating to administrative review of hearing officer determinations by department of motor vehicles appeals boards

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

1 Section 1. The executive law is amended by adding a new article 5-A  
2 to read as follows:

3 ARTICLE 5-A

4 TRAFFIC ADJUDICATION APPEALS BUREAU

5 SECTION 80. APPELLATE ADMINISTRATIVE REVIEW OF TRAFFIC INFRACTION  
6 ADJUDICATIONS OF CERTAIN TRAFFIC VIOLATIONS BUREAUS.

7 81. DIRECTOR OF THE TRAFFIC ADJUDICATION APPEALS BUREAU;  
8 POWERS AND DUTIES.

9 82. APPEALS OFFICERS OF THE TRAFFIC ADJUDICATION APPEALS  
10 BUREAU.

11 83. RIGHT OF APPEAL TO THE TRAFFIC ADJUDICATION APPEALS  
12 BUREAU.

13 84. REVIEW AND DETERMINATION BY APPEALS BOARD OF THE TRAFFIC  
14 ADJUDICATION APPEALS BUREAU.

15 85. APPEAL PROCEDURES FOR APPEALS TO THE TRAFFIC ADJUDICATION  
16 APPEALS BUREAU.

17 S 80. APPELLATE ADMINISTRATIVE REVIEW OF TRAFFIC INFRACTION ADJUDI-  
18 CATIONS OF CERTAIN TRAFFIC VIOLATIONS BUREAUS. 1. (A) THERE IS HEREBY  
19 CREATED WITHIN THE EXECUTIVE DEPARTMENT A SEPARATE BUREAU WHICH SHALL BE  
20 KNOWN AS THE "TRAFFIC ADJUDICATION APPEALS BUREAU". THE APPEALS BUREAU  
21 SHALL RECEIVE, CONSIDER AND DETERMINE APPEALS FROM DETERMINATIONS OF  
22 HEARING OFFICERS OF TRAFFIC VIOLATIONS BUREAUS DESCRIBED IN ARTICLE

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

LBD06437-01-9

1 TWO-A OF THE VEHICLE AND TRAFFIC LAW. THE CENTRAL OFFICE OF THE BUREAU  
2 SHALL BE LOCATED IN ALBANY, AND REGIONAL OFFICES OF THE BUREAU SHALL BE  
3 ESTABLISHED AND MAINTAINED IN SUCH NUMBERS AND LOCATIONS AS THE DIRECTOR  
4 OF THE BUREAU MAY DETERMINE WITHIN AMOUNTS MADE AVAILABLE BY APPROPRI-  
5 ATION.

6 (B) THE HEAD OF THE APPEALS BUREAU SHALL BE A DIRECTOR, WHO SHALL BE  
7 APPOINTED BY THE GOVERNOR, BY AND WITH THE ADVICE AND CONSENT OF THE  
8 SENATE, TO SERVE FOR A TERM OF SIX YEARS, AND UNTIL HIS OR HER SUCCESSOR  
9 HAS BEEN APPOINTED. SUCH DIRECTOR SHALL RECEIVE A SALARY IN THE SAME  
10 AMOUNT, FROM TIME TO TIME, AS THAT RECEIVED BY A STATE OFFICER DESIG-  
11 NATED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-  
12 NINE OF THIS CHAPTER.

13 2. (A) IN LIEU OF, OR IN ADDITION TO, ANY OTHER GROUNDS FOR APPEAL, A  
14 PERSON MAY APPEAL TO THE APPEALS BUREAU ON THE GROUND THAT ONE OR MORE  
15 MINIMUM PROCEDURES, ESTABLISHED BY OR PURSUANT TO LAW, FOR THE CONDUCT  
16 OF A HEARING FOR THE ADJUDICATION OF A TRAFFIC INFRACTION HAVE NOT BEEN  
17 FOLLOWED. WHERE THE APPEALS BUREAU FINDS THAT ONE OR MORE OF SUCH MINI-  
18 MUM PROCEDURES FOR THE CONDUCT OF A HEARING FOR THE ADJUDICATION OF A  
19 TRAFFIC INFRACTION, ESTABLISHED BY OR PURSUANT TO SUBDIVISION ONE OF  
20 SECTION TWO HUNDRED TWENTY-SEVEN OF THE VEHICLE AND TRAFFIC LAW, HAVE  
21 NOT BEEN FOLLOWED BY THE HEARING OFFICER WHO ADJUDICATED THE TRAFFIC  
22 INFRACTION, OR HAVE NOT BEEN FOLLOWED BY THE TRAFFIC VIOLATIONS BUREAU  
23 OR BY THE DEPARTMENT OR COMMISSIONER OF MOTOR VEHICLES: (I) IT SHALL  
24 AWARD THE APPELLANT HIS OR HER EXPENSES, INCLUDING AN AMOUNT FOR THE  
25 LOST TIME, INCONVENIENCE AND ANNOYANCE, AS WELL AS OUT-OF-POCKET COSTS  
26 AND FEES, IN TAKING SUCH APPEAL TO IT; HOWEVER, THE AMOUNT OF SUCH AWARD  
27 FIXED BY IT SHALL NOT EXCEED THE AMOUNT OF THE ORIGINAL FINE, AND  
28 PAYMENT OF SUCH AWARD TO THE APPELLANT SHALL NOT BE MADE BY IT BUT SHALL  
29 BE MADE BY THE DEPARTMENT OF MOTOR VEHICLES UPON THE PRESENTATION TO  
30 SUCH DEPARTMENT OF A VOUCHER ISSUED BY THE APPEALS BUREAU; AND (II) IF  
31 THE APPEALS BUREAU HAS FOUND OTHER INSTANCES WHERE THE SAME HEARING  
32 OFFICER, BUREAU, COMMISSIONER OR DEPARTMENT HAS NOT FOLLOWED THE  
33 REQUIRED MINIMUM PROCEDURES ESTABLISHED BY OR PURSUANT TO LAW FOR THE  
34 CONDUCT OF A HEARING, THE APPEALS BUREAU MAY ISSUE AN ORDER TO SUCH  
35 OFFICER, BUREAU, COMMISSIONER AND/OR DEPARTMENT, TO CEASE AND DESIST  
36 FROM SUCH IMPROPER CONDUCT AND TO COMPLY WITH MINIMUM PROCEDURES ESTAB-  
37 LISHED BY OR PURSUANT TO LAW.

38 (B) THE APPEALS BUREAU SHALL HAVE STANDING TO BRING A PROCEEDING UNDER  
39 ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES TO COMPEL ANY  
40 SUCH OFFICER, BUREAU, COMMISSIONER AND/OR DEPARTMENT TO COMPLY WITH ITS  
41 CEASE AND DESIST ORDERS. THE ISSUANCE OF A CEASE AND DESIST ORDER, OR  
42 THE COMMENCEMENT OF AN ARTICLE SEVENTY-EIGHT PROCEEDING, SHALL NOT BE A  
43 PREREQUISITE TO THE TAKING OF ANY ACTION OR ENFORCEMENT OF ANY REMEDY  
44 OTHERWISE PERMITTED, BUT SHALL BE CUMULATIVE TO ANY OTHER SUCH ACTION OR  
45 REMEDY.

46 (C) THE APPEALS BUREAU IS HEREBY EMPOWERED TO COMPEL THE COMMISSIONER  
47 AND DEPARTMENT OF MOTOR VEHICLES TO PRODUCE RECORDS AND OTHER EVIDENCE  
48 RELEVANT AND MATERIAL TO ANY APPEAL, OR RELEVANT AND MATERIAL TO THE  
49 MAKING OF ANY FINDING AUTHORIZED TO BE MADE HEREIN.

50 S 81. DIRECTOR OF THE TRAFFIC ADJUDICATION APPEALS BUREAU; POWERS AND  
51 DUTIES. THE DIRECTOR OF THE TRAFFIC ADJUDICATION APPEALS BUREAU SHALL BE  
52 THE ADMINISTRATIVE HEAD OF THE BUREAU AND SHALL:

53 1. APPOINT ONE OR MORE GROUPS OF THREE OR MORE APPEALS OFFICERS EACH,  
54 WHICH SHALL CONSTITUTE ONE OR MORE APPEALS BOARDS UNDER THE JURISDIC-  
55 TION, SUPERVISION AND CONTROL OF THE APPEALS BUREAU, AND MAY PRESCRIBE  
56 THEIR POWERS AND DUTIES AND FIX THEIR COMPENSATION WITHIN THE AMOUNT

1 APPROPRIATED THEREFOR, SUBJECT TO THE PROVISIONS OF THE CIVIL SERVICE  
2 LAW AND ANY APPLICABLE COLLECTIVE BARGAINING AGREEMENT;

3 2. SELECT A CHAIRMAN FOR EACH APPEALS BOARD FROM THE GROUP OF APPEALS  
4 OFFICERS SO APPOINTED;

5 3. DESIGNATE SUCH OTHER PERSONNEL, SUBJECT TO THE PROVISIONS OF THE  
6 CIVIL SERVICE LAW AND ANY APPLICABLE COLLECTIVE BARGAINING AGREEMENT, AS  
7 MAY BE NECESSARY TO ASSIST THE DIRECTOR OF THE APPEALS BUREAU, OR ASSIST  
8 AN APPEALS BOARD, IN CARRYING OUT HIS OR ITS DUTIES.

9 S 82. APPEALS OFFICERS OF THE TRAFFIC ADJUDICATION APPEALS BUREAU.  
10 EACH APPEALS OFFICER SHALL HAVE BEEN ADMITTED TO THE PRACTICE OF LAW IN  
11 THIS STATE AND SHALL NOT BE AN EMPLOYEE OF THE DEPARTMENT OF MOTOR VEHI-  
12 CLES OR DEPARTMENT OF TRANSPORTATION.

13 S 83. RIGHT OF APPEAL TO THE TRAFFIC ADJUDICATION APPEALS BUREAU. 1.  
14 ANY PERSON WHO IS AGGRIEVED BY A DETERMINATION OF A HEARING OFFICER OF A  
15 TRAFFIC VIOLATIONS BUREAU DESCRIBED IN ARTICLE TWO-A OF THE VEHICLE AND  
16 TRAFFIC LAW MAY APPEAL SUCH DETERMINATION PURSUANT TO THE PROVISIONS OF  
17 THIS ARTICLE.

18 2. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A TRANSCRIPT OF THE  
19 HEARING RESULTING IN THE DETERMINATION APPEALED FROM MUST BE SUBMITTED  
20 TO THE TRAFFIC ADJUDICATION APPEALS BUREAU ON ANY SUCH APPEAL.

21 3. IF THE ONLY ISSUE RAISED ON APPEAL IS THE APPROPRIATENESS OF THE  
22 PENALTY IMPOSED, THE APPELLANT, IN HIS OR HER DISCRETION, MAY SUBMIT  
23 SUCH APPEAL WITHOUT A TRANSCRIPT OF THE HEARING. IN SUCH EVENT, THE  
24 DECISION OF THE APPEALS BOARD MAY BE BASED SOLELY ON THE APPEAL PAPERS  
25 AND THE RECORDS OF THE DEPARTMENT OF MOTOR VEHICLES AND OF THE TRAFFIC  
26 ADJUDICATION APPEALS BUREAU, AND SUCH DECISION SHALL NOT BE SUBJECT TO  
27 JUDICIAL REVIEW.

28 4. WHERE A TRANSCRIPT OF THE HEARING IS SUBMITTED AT THE TIME AN  
29 APPEAL IS FILED, THE DETERMINATION OF THE APPEALS BOARD WILL BE SUBJECT  
30 TO JUDICIAL REVIEW AS PRESCRIBED IN SUBDIVISION FIVE OF SECTION EIGHTY-  
31 FIVE OF THIS ARTICLE.

32 S 84. REVIEW AND DETERMINATION BY APPEALS BOARD OF THE TRAFFIC ADJUDI-  
33 CATION APPEALS BUREAU. 1. EACH APPEAL FILED PURSUANT TO THIS ARTICLE  
34 SHALL BE REVIEWED BY AN APPEALS BOARD, WHICH SHALL MAKE A DETERMINATION  
35 OF SUCH APPEAL, AND SHALL CAUSE AN APPROPRIATE ORDER TO BE ENTERED IN  
36 THE RECORDS OF THE TRAFFIC ADJUDICATION APPEALS BUREAU. THE TRAFFIC  
37 ADJUDICATION APPEALS BUREAU SHALL TRANSMIT A COPY OF SUCH ORDER TO THE  
38 COMMISSIONER OF MOTOR VEHICLES, AND SUCH COMMISSIONER SHALL CAUSE SUCH  
39 ORDER TO BE ENTERED IN THE RECORDS OF THE DEPARTMENT OF MOTOR VEHICLES.

40 2. NO APPEAL SHALL BE REVIEWED IF IT IS FILED MORE THAN THIRTY DAYS  
41 AFTER NOTICE WAS GIVEN OF THE DETERMINATION APPEALED FROM. THE APPELLANT  
42 SHALL SUBMIT TOGETHER WITH SUCH APPEAL A COPY OF THE NOTICE OF DETERMI-  
43 NATION ISSUED BY THE DEPARTMENT OF MOTOR VEHICLES SHOWING THE DATE THE  
44 NOTICE OF DETERMINATION WAS GIVEN.

45 S 85. APPEAL PROCEDURES FOR APPEALS TO THE TRAFFIC ADJUDICATION  
46 APPEALS BUREAU. 1. ANY PERSON DESIRING TO FILE AN APPEAL FROM AN ADVERSE  
47 DETERMINATION PURSUANT TO THIS ARTICLE, SHALL DO SO IN A FORM AND MANNER  
48 PROVIDED BY THE DIRECTOR OF THE TRAFFIC ADJUDICATION APPEALS BUREAU  
49 AFTER SUCH DIRECTOR CONSULTS WITH THE COMMISSIONER OF MOTOR VEHICLES.  
50 THE TRANSCRIPT OF ANY HEARING WHICH FORMED THE BASIS FOR SUCH DETERMI-  
51 NATION WILL BE REVIEWED ONLY IF IT IS SUBMITTED BY THE APPELLANT. AN  
52 APPEAL SHALL NOT BE DEEMED TO BE FINALLY SUBMITTED UNTIL THE APPELLANT  
53 HAS SUBMITTED ALL FORMS OR DOCUMENTS REQUIRED TO BE SUBMITTED BY THE  
54 DIRECTOR OR BY THIS ARTICLE. IF THE APPELLANT IS NOT ABLE TO SUBMIT ANY  
55 REQUIRED FORM OR DOCUMENT BECAUSE OF THE REFUSAL OR FAILURE OF THE  
56 DEPARTMENT OF MOTOR VEHICLES TO SUPPLY SUCH FORM OR DOCUMENT TO THE

1 APPELLANT UPON THE APPELLANT'S REQUEST AND WILLINGNESS TO TENDER ANY  
2 AUTHORIZED FEE REQUIRED BY THE DEPARTMENT, THE APPELLANT SHALL FURNISH  
3 AN AFFIDAVIT OF SUCH FACT TO THE DIRECTOR AND THE DIRECTOR SHALL COMPEL  
4 THE DEPARTMENT OF MOTOR VEHICLES TO PRODUCE SUCH REQUIRED RECORDS, OR AN  
5 AUTHENTICATED COPY THEREOF, FREE OF CHARGE FOR USE BY THE TRAFFIC ADJU-  
6 DICATION APPEALS BUREAU OR AN APPEALS BOARD THEREOF UPON THE APPEAL. IN  
7 SUCH CASE, AN APPEAL SHALL BE DEEMED FINALLY SUBMITTED AS OF THE DATE  
8 THE DIRECTOR RECEIVED THE AFFIDAVIT FROM THE APPELLANT THAT THE APPEL-  
9 LANT WAS UNABLE TO OBTAIN A REQUIRED RECORD FROM THE DEPARTMENT OF MOTOR  
10 VEHICLES, PROVIDED THAT ALL OTHER FORMS AND DOCUMENTS REQUIRED TO BE  
11 SUBMITTED HAVE BEEN SUBMITTED OR SIMILAR AFFIDAVIT GIVEN WITH RESPECT TO  
12 INABILITY TO OBTAIN SAME FROM THE DEPARTMENT OF MOTOR VEHICLES.

13 2. TRANSCRIPTS OF THE RECORD OF ANY HEARING MAY BE OBTAINED AT THE  
14 COST TO THE DEPARTMENT OF MOTOR VEHICLES, IF PREPARED BY THE DEPARTMENT,  
15 OR AT THE RATE SPECIFIED IN THE CONTRACT BETWEEN THE DEPARTMENT AND THE  
16 CONTRACTOR, IF PREPARED BY A PRIVATE CONTRACTOR. THE AMOUNT PAID AT SUCH  
17 COST OR RATE BY A PERSON CONVICTED WHO SUBMITS A TRANSCRIPT OF THE HEAR-  
18 ING WHICH RESULTED IN THE DETERMINATION, UPON AN APPEAL FROM SUCH DETER-  
19 MINATION, SHALL BE REFUNDED BY THE DEPARTMENT OF MOTOR VEHICLES UPON THE  
20 RECEIPT BY IT OF AN ORDER, OR COPY THEREOF, FROM THE TRAFFIC ADJUDI-  
21 CATION APPEALS BUREAU DISMISSING THE CHARGES UPON THE DETERMINATION OF  
22 SUCH APPEAL.

23 3. THE FEE FOR FILING AN APPEAL SHALL BE TEN DOLLARS PAYABLE TO THE  
24 TRAFFIC ADJUDICATION APPEALS BUREAU. NO APPEAL SHALL BE ACCEPTED UNLESS  
25 THE REQUIRED FEE HAS BEEN PAID TO SUCH BUREAU. SUCH FEES SHALL BE PAID  
26 BY SUCH APPEALS BUREAU TO THE DEPARTMENT OF AUDIT AND CONTROL TO THE  
27 CREDIT OF THE JUSTICE COURT FUND. AFTER SUCH AUDIT AS SHALL BE REQUIRED  
28 BY THE COMPTROLLER, SUCH FEES SHALL BE CREDITED TO THE GENERAL FUND OF  
29 THE STATE.

30 4. (A) WHENEVER A DETERMINATION HAS NOT BEEN MADE WITHIN THIRTY DAYS  
31 AFTER AN APPEAL HAS BEEN FINALLY SUBMITTED, A STAY OF EXECUTION WILL BE  
32 DEEMED GRANTED BY OPERATION OF LAW, AND THE LICENSE, CERTIFICATE, PERMIT  
33 OR PRIVILEGE AFFECTED WILL BE AUTOMATICALLY RESTORED PENDING FINAL  
34 DETERMINATION.

35 (B) THE COMMISSIONER OF MOTOR VEHICLES SHALL COOPERATE WITH THE DIREC-  
36 TOR OF THE APPEALS BUREAU IN DEVISING MEANS OF COMMUNICATION BETWEEN THE  
37 DEPARTMENT OF MOTOR VEHICLES AND THE TRAFFIC ADJUDICATION APPEALS BUREAU  
38 TO EFFECTUATE THE PURPOSES AND PROVISIONS OF THIS ARTICLE. SUCH MEANS  
39 MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, A COMPUTER NETWORK WHEREBY  
40 INFORMATION MAY BE SHARED, EXCHANGED AND/OR INPUTTED BY AND BETWEEN THE  
41 DEPARTMENT OF MOTOR VEHICLES AND THE TRAFFIC ADJUDICATIONS APPEALS  
42 BUREAU. IF SUCH A NETWORK IS ESTABLISHED, ANY NOTICE OR RECORD REQUIRED  
43 TO BE PRODUCED BY, OR SENT BY OR TO, THE DEPARTMENT OF MOTOR VEHICLES  
44 MAY BE TRANSMITTED BY MEANS OF SUCH NETWORK.

45 5. (A) NO DETERMINATION OF A HEARING OFFICER WHICH IS APPEALABLE UNDER  
46 THE PROVISIONS OF THIS ARTICLE SHALL BE REVIEWED IN ANY COURT UNLESS AN  
47 APPEAL HAS BEEN FILED AND DETERMINED IN ACCORDANCE WITH THIS ARTICLE.

48 (B) A DETERMINATION OF THE APPEALS BOARD IN ANY CASE WHERE A TRAN-  
49 SCRIPT OF THE HEARING HAS BEEN SUBMITTED SHALL BE SUBJECT TO REVIEW  
50 PURSUANT TO THE PROVISIONS OF ARTICLE SEVENTY-EIGHT OF THE CIVIL PRAC-  
51 TICE LAW AND RULES. PROVIDED, HOWEVER, A STATEMENT BY THE APPEALS OFFI-  
52 CER AT THE CONCLUSION OF THE HEARING INDICATING THAT THE CHARGES HAVE  
53 BEEN SUSTAINED AND ANNOUNCING THE PENALTY IMPOSED, TOGETHER WITH A  
54 SUMMARY OF THE REASONS THE APPEAL WAS DENIED BY THE APPEALS BOARD, SHALL  
55 CONSTITUTE SUFFICIENT FINDINGS FOR THE PURPOSE OF SUCH REVIEW.

1 S 2. Section 228 of the vehicle and traffic law is REPEALED and a new  
2 section 228 is added to read as follows:

3 S 228. ADMINISTRATIVE REVIEW. ADMINISTRATIVE REVIEW OF THE DETERMI-  
4 NATION OF A HEARING OFFICER SHALL BE HAD BY MEANS OF AN APPEAL TO THE  
5 TRAFFIC ADJUDICATION APPEALS BUREAU IN THE EXECUTIVE DEPARTMENT, AS  
6 PROVIDED IN ARTICLE FIVE-A OF THE EXECUTIVE LAW. THE COMMISSIONER AND  
7 DEPARTMENT SHALL COOPERATE AND RENDER ASSISTANCE: (A) TO ANY PERSON  
8 CONVICTED OF A TRAFFIC INFRACTION UPON THE DETERMINATION OF A HEARING  
9 OFFICER, WHO WISHES TO APPEAL SUCH DETERMINATION TO THE APPEALS BUREAU,  
10 BY PROVIDING FORMS, INSTRUCTIONS AND RECORDS, SUITABLE TO FILE SUCH  
11 APPEAL WITH THE APPEALS BUREAU, IN COOPERATION WITH THE REQUIREMENTS OF  
12 THE DIRECTOR OF THE APPEALS BUREAU; AND (B) TO THE DIRECTOR OF THE  
13 APPEALS BUREAU TO IMPLEMENT THE PURPOSES AND PROVISIONS OF ARTICLE  
14 FIVE-A OF THE EXECUTIVE LAW.

15 S 3. Subdivision 1 of section 227 of the vehicle and traffic law, as  
16 amended by chapter 337 of the laws of 1970, is amended to read as  
17 follows:

18 1. (A) Every hearing for the adjudication of a traffic infraction, as  
19 provided by this article, shall be held before a hearing officer  
20 appointed by the commissioner. The burden of proof shall be upon the  
21 people, and no charge may be established except by clear and convincing  
22 evidence. The commissioner [may] SHALL prescribe, by rule or regulation,  
23 the procedures for the conduct of such hearings.

24 (B) SUCH PROCEDURES FOR THE CONDUCT OF SUCH HEARINGS SHALL, AT A MINI-  
25 MUM:

26 (I) PROHIBIT THE COMPILING OF PERIODIC STATISTICS ESTABLISHING  
27 CONVICTION RATES.

28 (II) PROHIBIT THE REVIEW OR RATING OF HEARING OFFICERS BASED UPON ANY  
29 CONVICTION RATE.

30 (III) PROHIBIT ANY REQUIREMENT THAT HEARING OFFICERS PROVIDE TO THE  
31 COMMISSIONER OR TO ADMINISTRATIVE OR SUPERVISORY EMPLOYEES OF THE  
32 DEPARTMENT GREATER OR ANY DIFFERENT JUSTIFICATION FOR THEIR DETERMI-  
33 NATIONS THAT THE CHARGES HAVE NOT BEEN ESTABLISHED FROM THEIR DETERMI-  
34 NATIONS THAT THE CHARGES HAVE BEEN ESTABLISHED.

35 (IV) PROHIBIT HEARING OFFICERS FROM USING LEADING QUESTIONS IN THE  
36 DIRECT EXAMINATION OF POLICE OFFICERS.

37 (V) REQUIRE THE HEARING OFFICER TO ADVISE THE ACCUSED OF HIS RIGHT TO  
38 REMAIN SILENT AND HIS RIGHT TO BE REPRESENTED BY COUNSEL, AND WHERE  
39 APPROPRIATE, TO EXPLAIN THE ELEMENTS OF THE OFFENSE AND AVAILABLE  
40 DEFENSES FOR AN ACCUSED WHO IS NOT REPRESENTED BY COUNSEL.

41 (VI) REQUIRE THAT THE RULES OF EVIDENCE BE ADHERED TO IN ALL  
42 PROCEEDINGS IN WHICH EITHER SIDE IS REPRESENTED BY COUNSEL.

43 S 4. a. The director of the traffic adjudications appeals bureau shall  
44 report annually on or before the thirty-first of January, beginning with  
45 the calendar year next succeeding the year this act takes effect, to the  
46 governor, the speaker of the assembly and the majority leader of the  
47 senate, evaluating the functioning and operations of the new traffic  
48 adjudication appeals bureau created by this act.

49 b. Each annual report shall specifically address how well the imple-  
50 mentation of this act alleviates the problems and criticisms of the  
51 former administrative adjudication system of the state department of  
52 motor vehicles, described by the task force on administrative adjudi-  
53 cation of the New York state bar association in its report dated July  
54 14, 1988.

1 c. Each such report also shall contain statistical tabulations and  
2 appropriate commentary thereon, showing, for each traffic violations  
3 bureau:

4 (i) the total number of appeals received by the new appeals bureau;  
5 (ii) the number of appeals in which it was alleged that one or more  
6 minimum procedures, established by or pursuant to law, for the conduct  
7 of a hearing for the adjudication of a traffic infraction have not been  
8 followed and the number of such appeals in which these allegations were  
9 found to have any merit (the success rate) and where found to have  
10 merit, the total amount awarded to all appellants for their expenses,  
11 out-of-pocket costs and fees, pursuant to subparagraph (i) of paragraph  
12 (a) of subdivision 2 of section 80 of the executive law, as added by  
13 this act;

14 (iii) the number of cease and desist orders issued by the new appeals  
15 bureau pursuant to subparagraph (ii) of paragraph (a) of subdivision 2  
16 of section 80 of the executive law, as added by this act, the reason or  
17 reasons such orders were issued, and the number of proceedings brought  
18 by the new appeals bureau pursuant to article 78 of the civil practice  
19 law and rules, to enforce its cease and desist orders;

20 (iv) the number of, and a description of, any other enforcement or  
21 persuasion mechanisms utilized;

22 (v) an assessment of the degree of compliance by each traffic  
23 violations bureau with the minimum procedures established by or pursuant  
24 to law for the conduct of hearings for the adjudication of traffic  
25 infractions, based, in part, upon the number of complaints received and  
26 how such complaints were (or were not) resolved; and

27 (vi) any other relevant facts, statistics and commentary with respect  
28 to the foregoing.

29 In addition, the director of the traffic adjudications appeals bureau  
30 may propose to the legislature the consideration or enactment of such  
31 additional legislation as in his opinion will further address or allevi-  
32 ate the problems and criticisms found in the above-referenced report of  
33 the bar association task force.

34 S 5. This act shall take effect on the first of January next succeed-  
35 ing the date on which it shall have become a law and sections one  
36 through three of this act shall apply by the terms of this act only to  
37 appeals which are finally submitted or deemed to be finally submitted on  
38 or after the effective date of this act; provided, however, that the  
39 provisions of section 228 of the vehicle and traffic law repealed by  
40 section two of this act shall continue to apply to any appeal which is  
41 finally submitted or deemed to have been finally submitted to a depart-  
42 ment of motor vehicles appeals board before the effective date of this  
43 act, but only until such appeal is determined by such appeals board; and  
44 any remand ordered by a court of competent jurisdiction pursuant to a  
45 proceeding under article 78 of the civil practice law and rules which  
46 has not yet been re-submitted to a department of motor vehicles appeals  
47 board before the effective date of this act, shall be referred to the  
48 traffic adjudication appeals bureau in the executive department for  
49 redetermination pursuant to the order of remand.