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

3428

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. BRADLEY, LUPARDO, ZEBROWSKI -- Multi-Sponsored by -- M. of A. GORDON, GREENE, GUNTHER, JOHN, KELLNER, REILLY -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law and the penal law, in relation to establishing a mandatory surcharge for justice court security in certain towns and villages

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 1809-f to read as follows:

S 1809-F. MANDATORY SURCHARGE REQUIRED IN CERTAIN TOWNS AND VILLAGES FOR TRAFFIC INFRACTIONS. 1. SUBJECT TO THE ENACTMENT OF A LOCAL LAW OR ORDINANCE BY A TOWN OR VILLAGE IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, WHEN PROCEEDINGS IN A JUSTICE COURT OF SUCH A TOWN OR VILLAGE RESULT IN A FINDING OF LIABILITY FOR A TRAFFIC INFRACTION DEFINED IN THIS CHAPTER, THERE SHALL BE LEVIED A MANDATORY SURCHARGE IN ADDITION TO ANY OTHER SENTENCE, FINE OR PENALTY OTHERWISE PERMITTED OR REQUIRED, IN AN AMOUNT NOT TO EXCEED TEN DOLLARS. SUCH SURCHARGE SHALL NOT BE DEEMED A MONETARY PENALTY FOR THE PURPOSES OF SECTION TWO HUNDRED THIRTY-SEVEN OF THIS CHAPTER.

2. THE MANDATORY SURCHARGE PROVIDED FOR IN SUBDIVISION ONE OF THIS SECTION SHALL BE PAID TO THE CLERK OF THE JUSTICE COURT THAT MADE THE DETERMINATION OF LIABILITY. WITHIN THE FIRST TEN DAYS OF THE MONTH NEXT SUCCEEDING THE COLLECTION OF SUCH SURCHARGE, SUCH CLERK SHALL PAY SUCH SURCHARGE TO THE CHIEF FISCAL OFFICER OF THE TOWN OR VILLAGE, SUCH SURCHARGE SHALL BE KEPT IN A SEPARATE ACCOUNT, AND SHALL BE USED SOLELY AND EXCLUSIVELY FOR THE COSTS OF PROVIDING SECURITY WITHIN THE JUSTICE COURT. SUCH COSTS SHALL INCLUDE SECURITY PERSONNEL COSTS AND THE COST OF SECURITY EQUIPMENT.

3. ANY PERSON WHO HAS PAID A MANDATORY SURCHARGE UNDER THE AUTHORITY OF THIS SECTION WHICH IS ULTIMATELY DETERMINED NOT TO BE REQUIRED BY

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

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THIS SECTION SHALL BE ENTITLED TO A REFUND OF SUCH MANDATORY SURCHARGE UPON WRITTEN APPLICATION TO THE JUSTICE COURT CLERK. THE COURT CLERK SHALL REQUIRE SUCH PROOF AS IS NECESSARY IN ORDER TO DETERMINE WHETHER A REFUND IS REQUIRED BY LAW. THE JUSTICE COURT CLERK SHALL REFUND ANY PORTION OF THE SURCHARGE PREVIOUSLY PAID TO THE TOWN OR VILLAGE; PROVIDED, HOWEVER, THAT SUCH CLERK SHALL PREPARE SUCH REPORTS AND PROVIDE SUCH INFORMATION WITH RESPECT TO SUCH REFUNDS AS THE GOVERNING BODY OF THE TOWN OR VILLAGE SHALL REQUIRE.

4. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, WHERE A MANDATORY SURCHARGE IS IMPOSED PURSUANT TO SECTION 60.40 OF THE PENAL LAW, NO MANDATORY SURCHARGE SHALL BE IMPOSED PURSUANT TO THE PROVISIONS OF THIS SECTION.

S 2. The penal law is amended by adding a new section 60.40 to read as follows:

S 60.40 MANDATORY SURCHARGE REQUIRED IN CERTAIN TOWNS AND VILLAGES FOR VIOLATIONS AND MISDEMEANORS.

1. SUBJECT TO THE ENACTMENT OF A LOCAL LAW OR ORDINANCE BY A TOWN OR VILLAGE IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, WHEN PROCEEDINGS IN A JUSTICE COURT OF SUCH A TOWN OR VILLAGE RESULT IN A CONVICTION FOR A MISDEMEANOR OR A VIOLATION, AS SUCH TERMS ARE DEFINED IN SECTION 10.00 OF THIS CHAPTER, THERE SHALL BE LEVIED A MANDATORY SURCHARGE IN ADDITION TO ANY OTHER SENTENCE, FINE OR PENALTY OTHERWISE PERMITTED OR REQUIRED, IN AN AMOUNT NOT TO EXCEED TEN DOLLARS.

2. THE MANDATORY SURCHARGE PROVIDED FOR IN SUBDIVISION ONE OF THIS SECTION SHALL BE PAID TO THE CLERK OF THE JUSTICE COURT THAT MADE THE DETERMINATION OF LIABILITY. WITHIN THE FIRST TEN DAYS OF THE MONTH NEXT SUCCEEDING THE COLLECTION OF SUCH SURCHARGE, SUCH CLERK SHALL PAY SUCH SURCHARGE TO THE CHIEF FISCAL OFFICER OF THE TOWN OR VILLAGE, SUCH SURCHARGE SHALL BE KEPT IN A SEPARATE ACCOUNT, AND SHALL BE USED SOLELY AND EXCLUSIVELY FOR THE COSTS OF PROVIDING SECURITY WITHIN THE JUSTICE COURT. SUCH COSTS SHALL INCLUDE SECURITY PERSONNEL COSTS AND THE COST OF SECURITY EQUIPMENT.

3. ANY PERSON WHO HAS PAID A MANDATORY SURCHARGE UNDER THE AUTHORITY OF THIS SECTION WHICH IS ULTIMATELY DETERMINED NOT TO BE REQUIRED BY THIS SECTION SHALL BE ENTITLED TO A REFUND OF SUCH MANDATORY SURCHARGE UPON WRITTEN APPLICATION TO THE JUSTICE COURT CLERK. THE COURT CLERK SHALL REQUIRE SUCH PROOF AS IS NECESSARY IN ORDER TO DETERMINE WHETHER A REFUND IS REQUIRED BY LAW. THE JUSTICE COURT CLERK SHALL REFUND ANY PORTION OF THE SURCHARGE PREVIOUSLY PAID TO THE TOWN OR VILLAGE; PROVIDED, HOWEVER, THAT SUCH CLERK SHALL PREPARE SUCH REPORTS AND PROVIDE SUCH INFORMATION WITH RESPECT TO SUCH REFUNDS AS THE GOVERNING BODY OF THE TOWN OR VILLAGE SHALL REQUIRE.

4. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, WHERE A MANDATORY SURCHARGE IS IMPOSED PURSUANT TO SECTION EIGHTEEN HUNDRED NINE-F OF THE VEHICLE AND TRAFFIC LAW, NO MANDATORY SURCHARGE SHALL BE IMPOSED PURSUANT TO THE PROVISIONS OF THIS SECTION.

S 3. This act shall take effect January 1, 2010.