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

468

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. JEFFRIES -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to complaint procedures for satisfied or wrongfully imposed fines or penalties by the New York city parking violations bureau

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

Section 1. Subdivision 1-a of section 240 of the vehicle and traffic law, as amended by chapter 379 of the laws of 1992, is amended to read as follows:

1-a. Fines and penalties. Whenever a plea of not guilty has been entered, WHICH MAY INVOLVE BUT MAY NOT BE LIMITED TO CASES CONCERNING FAST OR BROKEN METERS OR PARKING SIGN VERIFICATION or the bureau has been notified that an allegation of liability in accordance with section eleven hundred eleven-a of this chapter or an allegation of liability in accordance with section two thousand nine hundred eighty-five of the public authorities law or sections sixteen-a, sixteen-b and sixteen-c of chapter seven hundred seventy-four of the laws of nineteen hundred fifty, is being contested, by a person in a timely fashion and a hearing upon the merits has been demanded, but has not yet been held, the bureau shall not IMPOSE OR ALLOW TO ACCRUE ANY PENALTIES AND SHALL NOT issue any notice of fine or penalty to that person prior to the date of the hearing. PENALTIES SHALL NOT BE IMPOSED OR BE ALLOWED TO ACCRUE DURING AN ADJOURNMENT GRANTED BY A HEARING EXAMINER DURING A HEARING FOR THE ADJUDICATION OF A CHARGE OF A PARKING VIOLATION OR AN ALLEGATION OF A LIABILITY IN ACCORDANCE WITH SECTION ELEVEN HUNDRED ELEVEN-A OF THIS CHAPTER.

S 2. Section 240 of the vehicle and traffic law is amended by adding a new subdivision 1-b to read as follows:

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

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1-B. IF THE BUREAU FAILS TO COMPLY WITH THE PROVISIONS OF SUBDIVISION ONE-A OF THIS SECTION, THE PERSON CHARGED WITH A PARKING VIOLATION OR AN ALLEGATION OF LIABILITY IN ACCORDANCE WITH SECTION ELEVEN HUNDRED ELEVEN-A OF THIS CHAPTER SHALL HAVE THE RIGHT TO AN EXPEDITED REVIEW BEFORE A PANEL OF THREE ADMINISTRATIVE LAW JUDGES. SUCH PANEL, UPON PETITION BY THE COMPLAINANT, MAY AT ITS SOLE DISCRETION, DIRECT THE PARKING VIOLATIONS BUREAU TO PAY THE COMPLAINANT DOUBLE THE PENALTY WRONGFULLY IMPOSED OR ACCRUED WHETHER OR NOT SUCH PERSON IS DETERMINED TO BE GUILTY OF THE VIOLATION CHARGED.

S 3. Paragraph a of subdivision 2 of section 240 of the vehicle and traffic law, as amended by chapter 379 of the laws of 1992, is amended to read as follows:

a. Every hearing for the adjudication of a charge of parking violation or an allegation of liability in accordance with section eleven hundred eleven-a of this chapter or an allegation of liability in accordance with section two thousand nine hundred eighty-five of the public authorities law or sections sixteen-a, sixteen-b and sixteen-c of chapter seven hundred seventy-four of the laws of nineteen hundred fifty shall be held NO LATER THAN THIRTY DAYS AFTER ENTERING A PLEA OF NOT GUILTY before a hearing examiner in accordance with rules and regulations promulgated by the bureau. THE PERSON CHARGED WITH A PARKING VIOLATION OR AN ALLEGATION OF LIABILITY IN ACCORDANCE WITH SECTION ELEVEN HUNDRED ELEVEN-A OF THIS CHAPTER SHALL BE NOTIFIED OF THE DATE OF THE HEARING IF REQUESTED. FAILURE BY THE BUREAU TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION WILL RESULT, UPON THE REQUEST OF THE PERSON CHARGED, IN AN AUTOMATIC DISMISSAL OF ALL CHARGES RELATING TO AND ONLY TO THAT VIOLATION OR ALLEGATION.

S 4. Subdivision 1 of section 241 of the vehicle and traffic law, as amended by chapter 379 of the laws of 1992, is amended to read as follows:

1. The hearing examiner shall make a determination on the charges, either sustaining or dismissing them. Where the hearing examiner determines that the charges have been sustained he may examine either the prior parking violations record or the record of liabilities incurred in accordance with section eleven hundred eleven-a of this chapter or the record of liabilities incurred in accordance with section two thousand nine hundred eighty-five of the public authorities law or sections sixteen-a, sixteen-b and sixteen-c of chapter seven hundred seventy-four of the laws of nineteen hundred fifty of the person charged, as applicable prior to rendering a final determination. Final determinations sustaining or dismissing charges shall be entered on a final determination roll maintained by the bureau together with records showing payment and nonpayment of penalties AND A NOTICE TO THAT EFFECT SHALL BE SENT PROMPTLY TO THE OPERATOR OR OWNER OF THE VEHICLE DESCRIBED IN THE NOTICE OF VIOLATION. IF THE CHARGES ARE SUSTAINED, THE NOTICE OF FINAL DETERMINATION SHALL STATE WITH CLARITY AND DETAIL THE REASONS FOR THE DETERMINATION.

S 5. Section 241-a of the vehicle and traffic law, as added by chapter 338 of the laws of 1987, paragraph (b) of subdivision 1 and subdivisions 2, 3 and 4 as amended and subdivision 5 as added by chapter 339 of the laws of 1987, is amended to read as follows:

S 241-a. Complaint procedure for satisfied or wrongfully imposed fine or penalty. 1. (a) Every city with a population of more than one million inhabitants that has established a parking violations bureau shall establish, within such bureau, a properly staffed complaint unit of public service representatives to respond to complaints from any person

who, after having satisfied, by payment, adjudication, or administrative action, any fine or penalty for a parking violation or after having proven that a fine or penalty was wrongfully imposed on this person, receives a demand for payment of the fine or penalty previously satisfied or wrongfully imposed, or is denied any registration or renewal application by the department of motor vehicles upon a certification from such parking violations bureau based upon lack of payment of any fine or penalty previously satisfied or wrongfully imposed. The complaint unit established under this section shall accept complaints either in person or by certified mail, return receipt requested. Each written demand for payment, other than the first demand following issuance of the notice of violation[,] AND THE ERROR CORRECTION FORM shall advise the addressee of the existence of the complaint unit and the procedure for submitting a complaint AND SECURING PAYMENT OF EXPENSES. Upon receipt of a complaint, if in person, or within ten work days after receipt of a complaint if by mail, the complaint unit shall acknowledge receipt in writing and notify the complainant of the procedure for further review. The complaint unit shall, within thirty days after receiving a complaint in person or by certified mail supported by the proof prescribed by this section, notify the complainant that the payment has been credited to his or her record; that the wrongful imposition has been removed from the complainant's record; or that the information sent to the bureau fails to prove that the fine or penalty was satisfied or that the imposition was wrongful, in which case the reason or reasons shall be set forth.

(b) If, after this thirty day period, the bureau continues to demand payment from this person of the fine or penalty previously satisfied or wrongfully imposed, or if the bureau does not render a determination, the person within [six] TWO months from the date of his or her complaint shall have the right to an expedited review before a panel of three administrative law judges. Such panel shall be empowered to compel the bureau to produce records and other evidence relevant and material to the complaint. The complainant shall be required to submit, together with his or her request for a review, a copy of all the materials submitted with the original complaint. The panel of administrative law judges shall be empowered to direct that the bureau's records be changed, as appropriate, to insure that no further demand is made for the fine or penalty previously satisfied or wrongfully imposed, and the bureau shall comply with such directive. Further, the panel of administrative law judges, upon petition by the complainant, may at its sole discretion, direct the parking violations bureau to pay the complainant who receives a wrongfully imposed fine or has previously satisfied an outstanding fine such out-of-pocket expenses as the panel deems reasonable only in such cases where the complainant sufficiently demonstrates that he or she has notified the bureau of his or her complaint under this section and the bureau has failed, in the panel's opinion, to remove the wrongfully imposed fine or the previously satisfied fine[; however, payment of such expenses shall not exceed the amount of the original fine]. SUCH OUT-OF-POCKET EXPENSES SHALL INCLUDE, BUT NOT BE LIMITED TO, LOST WAGES, NOT TO EXCEED ONE HUNDRED FIFTY DOLLARS PER DAY, PROVIDED THAT THE COMPLAINANT SUBMITS PROOF SATISFACTORY TO THE PANEL OF SUCH LOSS. THE PAYMENT OF OUT-OF-POCKET EXPENSES BY THE PARKING VIOLATIONS BUREAU AND ANY OTHER PAYMENT DUE FROM THE PARKING VIOLATIONS BUREAU TO A COMPLAINANT SHALL BE MADE WITHIN THIRTY DAYS. AFTER FILING OF A PETITION BY THE COMPLAINANT AND SUBSEQUENT FINDING BY THE PANEL THAT PAYMENT WAS NOT TIMELY MADE, SUCH PAYMENT SHALL BE DOUBLED.

(c) Any other city authorized to establish a parking violations bureau may create a panel to resolve complaints relating to satisfied penalties and wrongfully imposed penalties. The composition of such a panel shall be determined by local option.

2. This section shall not apply to parking violation fines or penalties relating to commercial, taxi, common or contract carriers or livery vehicles.

3. In cities required to create a review panel under this section, the parking violations bureau shall keep a record of all complaints submitted under this section for a minimum of [three] TEN years, and shall issue a public report every year containing the number of complaints heard each year according to category, the number of dispositions favorable to complainants, the average compensation awarded in such favorable dispositions, and any other appropriate information. Such information shall also be published annually and placed in the municipal reference library, in such cities where applicable.

4. The proof that must be submitted in connection with a complaint made under this section is, as appropriate, a copy of the receipt, money order or front and back of cancelled check; a copy of a police report of stolen vehicle or stolen or lost plates or proof of an insurance company payment for a stolen vehicle, or a department of motor vehicles receipt for surrendered plates. As used in this section, a "wrongfully imposed" fine or penalty shall mean a fine or penalty which is imposed after the respective vehicle has been stolen or after the license plates were stolen, lost or surrendered to the department of motor vehicles.

5. Every such parking violations bureau shall adopt and promulgate rules and regulations not inconsistent with any applicable provision of law, to carry out the purposes of this section.

6. EVERY PARKING VIOLATIONS BUREAU SHALL POST SIGNS IN CONSPICUOUS PLACES IN ITS OFFICES OPEN TO THE PUBLIC, IN BOTH ENGLISH AND SPANISH, INFORMING COMPLAINANTS OF THE COMPLAINT PROCEDURE AND THEIR RIGHTS WITH RESPECT TO THE RECOUPMENT OF OUT-OF-POCKET EXPENSES.

S 6. This act shall take effect on the first of September next succeeding the date on which it shall have become a law provided, however, sections one, three and four of this act shall expire on the same date as chapter 746 of the laws of 1988, as amended.