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

2305

2009-2010 Regular Sessions

I N S E N A T E

February 17, 2009

Introduced by Sen. PADAVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the county law, the New York city charter and the administrative code of the city of New York, in relation to the adjudication of violations of laws enforced by the New York city department of consumer affairs

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

Section 1. Subdivision 4 of section 918 of the county law, as separately amended by chapters 419 and 473 of the laws of 1988, is amended to read as follows:

4. Any other laws to the contrary notwithstanding, the county clerk in each of the counties within the city of New York is authorized and empowered to maintain separate judgment docket volumes containing the printed transcript or transcripts, in strict alphabetical order of judgment made, entered, and docketed in the civil court of the city of New York against individuals, corporations, and other entities on behalf of the parking violations bureau, the environmental control board, the taxi and limousine commission, THE DEPARTMENT OF CONSUMER AFFAIRS, and the commissioner of jurors of the city of New York. These volumes may be maintained in the form of computer print outs which shall contain the date of judgment, the name and address of the judgment debtor or debtors, the amount of the judgment, and other information which the county clerk may deem necessary to sufficiently describe the parties to the action or proceeding or nature or the manner of the entry of the judgment. Provided, however, with respect to judgments on behalf of the parking violations bureau, the county clerk may, in his OR HER discretion, in lieu of such volumes, maintain the aforementioned data in a micrographic or computer retrievable format. With respect to judgments on behalf of the parking violations bureau, such volumes or other format shall be maintained pursuant to this subdivision for only those

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

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individuals, corporations, and other entities having vehicles registered in the counties within the city of New York.

S 2. The New York city charter is amended by adding a new section 2203-a to read as follows:

S 2203-A. CIVIL PENALTY ADJUDICATION. (A) THE DEPARTMENT SHALL CONDUCT PROCEEDINGS FOR THE ADJUDICATION OF VIOLATIONS OF THE LAWS AND RULES THE ENFORCEMENT OF WHICH ARE WITHIN THE JURISDICTION OF THE DEPARTMENT PURSUANT TO THE CHARTER, THE ADMINISTRATIVE CODE, OR ANY OTHER LAW, GENERAL, SPECIAL, OR LOCAL AND SHALL HAVE THE POWER TO RENDER DECISIONS AND ORDERS AND TO IMPOSE CIVIL PENALTIES FOR SUCH VIOLATIONS. EXCEPT TO THE EXTENT THAT DOLLAR LIMITS ARE OTHERWISE SPECIFICALLY PROVIDED, SUCH CIVIL PENALTIES SHALL NOT EXCEED FIVE HUNDRED DOLLARS FOR EACH VIOLATION.

(B) SUCH PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THIS SECTION AND WITH RULES PROMULGATED BY THE COMMISSIONER.

(C) ALL SUCH PROCEEDINGS SHALL BE COMMENCED BY THE SERVICE OF A NOTICE OF VIOLATION. THE COMMISSIONER SHALL PRESCRIBE THE FORM AND WORDING OF NOTICES OF VIOLATION. THE NOTICE OF VIOLATION OR COPY THEREOF, WHEN FILLED IN AND SERVED, SHALL CONSTITUTE NOTICE OF THE VIOLATION CHARGED AND, IF SWORN TO OR AFFIRMED, SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN. IN ADDITION TO SERVING THE NOTICE ON THE PERSON BEING CHARGED, WHERE WRITTEN AUTHORIZATION IS FILED WITH THE DEPARTMENT, THE DEPARTMENT SHALL DELIVER BY FIRST CLASS MAIL A COPY OF THE NOTICE TO THE CORPORATE HEADQUARTERS OR WHOLESALE SUPPLIER OF THE PERSON BEING SERVED. SUCH NOTICE BY MAIL SHALL PROVIDE A RESPONDENT WITH THE MINIMUM PERIOD OF TIME TO RESPOND PROVIDED FOR IN SUBDIVISION (E) OF THIS SECTION.

(D) THE NOTICE OF VIOLATION SHALL CONTAIN INFORMATION ADVISING THE PERSON CHARGED OF THE MANNER AND THE TIME IN WHICH SUCH PERSON MAY EITHER ADMIT OR DENY THE VIOLATION CHARGED IN THE NOTICE. SUCH NOTICE OF VIOLATION SHALL ALSO CONTAIN A WARNING TO ADVISE THE PERSON CHARGED THAT FAILURE TO PLEAD IN THE MANNER AND TIME STATED IN THE NOTICE MAY RESULT IN A DEFAULT DECISION AND ORDER BEING ENTERED AGAINST SUCH PERSON. THE ORIGINAL OR A COPY OF THE NOTICE OF VIOLATION SHALL BE FILED AND RETAINED BY THE DEPARTMENT AND SHALL BE DEEMED A RECORD KEPT IN THE ORDINARY COURSE OF BUSINESS.

(E) WHERE A RESPONDENT HAS FAILED TO PLEAD WITHIN THE TIME ALLOWED BY THE RULES OF THE COMMISSIONER OR HAS FAILED TO APPEAR ON A DESIGNATED HEARING DATE OR A SUBSEQUENT DATE FOLLOWING AN ADJOURNMENT, SUCH FAILURE TO PLEAD OR APPEAR SHALL BE DEEMED, FOR ALL PURPOSES, TO BE AN ADMISSION OF LIABILITY AND SHALL BE GROUNDS FOR RENDERING A DEFAULT DECISION AND ORDER IMPOSING A PENALTY IN THE MAXIMUM AMOUNT PRESCRIBED UNDER LAW FOR THE VIOLATION CHARGED.

(F) ANY FINAL ORDER IMPOSING A CIVIL PENALTY, WHETHER THE ADJUDICATION WAS HAD BY HEARING OR UPON DEFAULT OR OTHERWISE, SHALL CONSTITUTE A JUDGMENT THAT MAY BE ENTERED IN THE CIVIL COURT OF THE CITY OF NEW YORK OR ANY OTHER PLACE PROVIDED FOR THE ENTRY OF CIVIL JUDGMENTS WITHIN THE STATE, AND MAY BE ENFORCED WITHOUT COURT PROCEEDINGS IN THE SAME MANNER AS THE ENFORCEMENT OF MONEY JUDGMENTS ENTERED IN CIVIL ACTIONS; PROVIDED, HOWEVER, THAT NO SUCH JUDGMENT SHALL BE ENTERED WHICH EXCEEDS THE SUM OF TWENTY-FIVE THOUSAND DOLLARS FOR EACH RESPONDENT.

(G) NOTWITHSTANDING THE FOREGOING PROVISION, BEFORE A JUDGMENT BASED UPON A DEFAULT MAY BE SO ENTERED, THE DEPARTMENT MUST HAVE NOTIFIED THE RESPONDENT BY FIRST CLASS MAIL IN SUCH FORM AS THE COMMISSIONER MAY DIRECT: (I) OF THE DEFAULT DECISION AND ORDER AND THE PENALTY IMPOSED; (II) THAT A JUDGMENT WILL BE ENTERED IN THE CIVIL COURT OF THE CITY OF

NEW YORK OR ANY OTHER PLACE PROVIDED FOR THE ENTRY OF CIVIL JUDGMENTS WITHIN THE STATE OF NEW YORK; AND (III) THAT ENTRY OF SUCH JUDGMENT MAY BE AVOIDED BY REQUESTING A STAY OF DEFAULT FOR GOOD CAUSE SHOWN AND EITHER REQUESTING A HEARING OR ENTERING A PLEA PURSUANT TO THE RULES OF THE COMMISSIONER WITHIN THIRTY DAYS OF THE MAILING OF SUCH NOTICE. IN ADDITION TO NOTIFYING THE RESPONDENT, WHERE WRITTEN AUTHORIZATION IS FILED WITH THE DEPARTMENT, THE DEPARTMENT SHALL DELIVER BY FIRST CLASS MAIL A COPY OF THE NOTICE TO THE CORPORATE HEADQUARTERS OR WHOLESALE SUPPLIER OF THE PERSON BEING NOTIFIED. SUCH NOTICE BY MAIL SHALL PROVIDE THE MINIMUM PERIOD OF TIME TO RESPOND AS SET FORTH IN THIS SUBDIVISION.

(H) A JUDGMENT ENTERED PURSUANT TO SUBDIVISION (F) OF THIS SECTION SHALL REMAIN IN FULL FORCE AND EFFECT FOR EIGHT YEARS.

(I) THE DEPARTMENT SHALL NOT ENTER ANY FINAL DECISION OR ORDER PURSUANT TO THE PROVISIONS OF SUBDIVISION (F) OF THIS SECTION UNLESS THE NOTICE OF VIOLATION SHALL HAVE BEEN SERVED IN THE SAME MANNER AS IS PRESCRIBED FOR SERVICE OF PROCESS BY ARTICLE THREE OF THE CIVIL PRACTICE LAW AND RULES OR ARTICLE THREE OF THE BUSINESS CORPORATION LAW OR AS PROVIDED IN SUBDIVISION (J) OF THIS SECTION.

(J) (1) SERVICE OF A NOTICE OF VIOLATION MAY BE MADE BY DELIVERING SUCH NOTICE TO A PERSON EMPLOYED BY THE RESPONDENT ON OR IN CONNECTION WITH THE PREMISES WHERE THE VIOLATION OCCURRED OR TO A PERSON EMPLOYED BY THE RESPONDENT AT THE PREMISES AT WHICH THE RESPONDENT ACTUALLY CONDUCTS THE BUSINESS THE OPERATION OF WHICH GAVE RISE TO THE VIOLATION.

(2) SUCH NOTICE MAY ONLY BE DELIVERED PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION WHERE A REASONABLE ATTEMPT HAS BEEN MADE TO DELIVER SUCH NOTICE TO A PERSON IN SUCH PREMISES UPON WHOM SERVICE MAY BE MADE AS PROVIDED FOR BY ARTICLE THREE OF THE CIVIL PRACTICE LAW AND RULES OR ARTICLE THREE OF THE BUSINESS CORPORATION LAW.

(3) WHEN A COPY OF SUCH NOTICE HAS BEEN DELIVERED PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION, A COPY SHALL BE MAILED TO THE RESPONDENT AT SUCH RESPONDENT'S LAST KNOWN RESIDENCE OR BUSINESS ADDRESS OR TO AN ADDRESS CONTAINED IN THE FILES OF THE DEPARTMENT COMPILED AND MAINTAINED FOR THE PURPOSE OF THE ENFORCEMENT OF THE PROVISIONS OF THE CHARTER OR ADMINISTRATIVE CODE OR OTHER LAW OVER WHICH THE DEPARTMENT HAS JURISDICTION.

(4) PROOF OF SERVICE MADE PURSUANT TO THIS SUBDIVISION SHALL BE FILED WITH THE COMMISSIONER WITHIN TWENTY DAYS OF SERVICE IN THE MANNER PRESCRIBED; SERVICE SHALL BE COMPLETE TEN DAYS AFTER SUCH FILING.

(K) THE REMEDIES AND PENALTIES PROVIDED IN THIS SECTION SHALL BE IN ADDITION TO ANY REMEDIES OR PENALTIES PROVIDED UNDER ANY OTHER LAW, INCLUDING, BUT NOT LIMITED TO, CIVIL OR CRIMINAL ACTIONS AND PROCEEDINGS.

S 3. Subdivision a of section 20-701 of the administrative code of the city of New York is amended to read as follows:

a. Deceptive trade practice. Any false, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind made in connection with the sale, lease, rental or loan or in connection with the offering for sale, lease, rental, or loan of consumer goods or services, or in the extension of consumer credit or in the collection of consumer debts, which has the capacity, tendency or effect of deceiving or misleading consumers. Deceptive trade practices include but are not limited to: (1) representations that goods or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; the supplier has a sponsorship, approval, status, affiliation, or connection that he or she does not have; goods are original or new if they are

deteriorated, altered, reconditioned, reclaimed, or secondhand; or, goods or services are of a particular standard, quality, grade, style or model, if they are of another; (2) the use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact or failure to state a material fact if such use deceives or tends to deceive; (3) disparaging the goods, services, or business of another by false or misleading representations of material facts; (4) offering goods or services with intent not to sell them as offered; (5) offering goods or services with intent not to supply reasonable expectable public demand, unless the offer discloses to limitation of quantity; and (6) making false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions, or price in comparison to prices of competitors or one's own price at a past or future time; (7) stating that a consumer transaction involves consumer rights, remedies or obligations that it does not involve; (8) stating that services, replacements or repairs are needed if they are not; (9) FAILING TO PUBLICLY REVEAL AND DISPLAY IN ENGLISH, AS REQUIRED BY LAW, THE TRUE NAME OF THE PROPRIETORS OR OWNERS OF ANY SHOP, STORE OR OTHER ESTABLISHMENT OR SERVICE; and [(9)] (10) falsely stating the reasons for offering or supplying goods or services at scale discount prices.

S 4. This act shall take effect immediately.