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

2707

2009-2010 Regular Sessions

I N S E N A T E

February 26, 2009

Introduced by Sens. ADAMS, MONSERRATE, PARKER -- 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 requiring notice prior to and after the repossession or retaking of a motor vehicle or motorcycle, opportunity to cure default, and notice of sale

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

Section 1. Subdivision 1 of section 425 of the vehicle and traffic law, as amended by chapter 81 of the laws of 1968, is amended to read as follows:

1. Any person, firm or corporation, or agent, employee or representative thereof, repossessing or retaking a motor vehicle or motorcycle pursuant to the provisions of article nine of the uniform commercial code, or other authority of law, or any contract or agreement, shall[,]:

(A) immediately following such repossession or retaking, personally appear at a station house or other office of the police department, or agency or officer performing like functions, in the locality wherein such repossession or retaking occurred, give notice to such department, agency or officer of such repossession or retaking and thereafter and within twenty-four hours personally deliver or mail by special delivery first class mail to the nearest motor vehicle district office, [(a)] (1) notice of such repossession or retaking in such form as the commissioner may require and [(b)] (2) the number plates of such motor vehicle or motorcycle. Notice of such repossession or retaking, including the name and address of the person, firm or corporation repossessing or retaking the same, shall also be given within twenty-four hours thereof to the owner of such motor vehicle or motorcycle, either personally or by registered or certified mail directed to such owner at his OR HER last-known address. Unless the motor vehicle or motorcycle can be repossessed or retaken without breach of the peace, it shall be repossessed or

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

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retaken by legal process, but nothing herein contained shall be construed to authorize a violation of the criminal law.

(B) WITHIN FIVE DAYS AFTER HE OR SHE REPOSSESSES THE GOODS, THE PERSON, FIRM OR CORPORATION, OR AGENT, EMPLOYEE OR REPRESENTATIVE THEREOF, SHALL DELIVER TO THE OWNER PERSONALLY OR SEND TO HIM OR HER AT HIS OR HER LAST KNOWN ADDRESS BY REGISTERED OR CERTIFIED MAIL, A WRITTEN NOTICE WHICH BRIEFLY STATES:

(1) THE RIGHT OF THE OWNER TO REDEEM THE MOTOR VEHICLE OR MOTORCYCLE, AND THE AMOUNT PAYABLE FOR IT;

(2) THE RIGHTS OF THE OWNER AS TO A RESALE, AND HIS OR HER LIABILITY FOR A DEFICIENCY; AND

(3) THE EXACT LOCATION WHERE THE MOTOR VEHICLE OR MOTORCYCLE IS STORED AND THE ADDRESS WHERE ANY PAYMENT IS TO BE MADE OR NOTICE DELIVERED.

(C) FOR FIFTEEN DAYS AFTER THE PERSON, FIRM OR CORPORATION, OR AGENT, EMPLOYEE OR REPRESENTATIVE THEREOF, GIVES THE NOTICE REQUIRED BY PARAGRAPH (B) OF THIS SUBDIVISION, THE PERSON, FIRM OR CORPORATION, OR AGENT, EMPLOYEE OR REPRESENTATIVE THEREOF, SHALL RETAIN ANY REPOSSESSED MOTOR VEHICLE OR MOTORCYCLE.

(D) DURING THE PERIOD PROVIDED FOR IN PARAGRAPH (C) OF THIS SUBDIVISION, THE OWNER MAY:

(1) REDEEM AND TAKE POSSESSION OF THE MOTOR VEHICLE OR MOTORCYCLE; AND

(2) RESUME THE PERFORMANCE OF THE UNDERLYING AGREEMENT.

(E) TO REDEEM THE GOODS, THE OWNER SHALL:

(1) TENDER THE AMOUNT DUE UNDER THE UNDERLYING AGREEMENT AT THE TIME OF REDEMPTION, WITHOUT GIVING EFFECT TO ANY PROVISION WHICH ALLOWS ACCELERATION OF ANY INSTALLMENT OTHERWISE PAYABLE AFTER THAT TIME;

(2) TENDER PERFORMANCE OF ANY OTHER PROMISE FOR THE BREACH OF WHICH THE MOTOR VEHICLE OR MOTORCYCLE WAS REPOSSESSED; AND

(3) IF THE NOTICE PROVIDED FOR IN PARAGRAPH (B) OF THIS SUBDIVISION WAS GIVEN, PAY THE ACTUAL AND REASONABLE EXPENSES OF RETAKING AND STORING THE MOTOR VEHICLE OR MOTORCYCLE.

(F) THE PERSON, FIRM OR CORPORATION, OR AGENT, EMPLOYEE OR REPRESENTATIVE THEREOF, SHALL SELL THE REPOSSESSED MOTOR VEHICLE OR MOTORCYCLE AT PRIVATE SALE OR AT PUBLIC AUCTION. AT LEAST TEN DAYS BEFORE THE SALE, THE PERSON, FIRM OR CORPORATION, OR AGENT, EMPLOYEE OR REPRESENTATIVE THEREOF, SHALL NOTIFY THE OWNER IN WRITING SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, SENT TO THE OWNER'S LAST KNOWN ADDRESS OF THE TIME AND PLACE OF SALE. ANY SALE OF A REPOSSESSED MOTOR VEHICLE OR MOTORCYCLE MUST BE ACCOMPLISHED IN A COMMERCIALLY REASONABLE MANNER.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.