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

4388

2011-2012 Regular Sessions

I N A S S E M B L Y

February 3, 2011

Introduced by M. of A. BRENNAN, ORTIZ, DINOWITZ, MAISEL, DenDEKKER -- Multi-Sponsored by -- M. of A. ABBATE, AUBRY, CAMARA, COLTON, GLICK, HOOPER, JACOBS, PHEFFER, REILLY, ROBINSON, SCARBOROUGH, SWEENEY, TITONE -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to wrongful towing

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

Section 1. Paragraph (a) of subdivision 1 of section 241-a of the vehicle and traffic law, as added by chapter 338 of the laws of 1987, is amended to read as follows:

(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 *OR WHOSE VEHICLE HAS BEEN WRONGFULLY TOWED AS SUCH TERM IS DEFINED BY SECTION TWO HUNDRED FORTY-ONE-B OF THIS ARTICLE*. 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, shall advise the addressee of the existence of the complaint unit and the procedure for submitting a complaint. Upon receipt of a complaint, if in person, or within ten work days after receipt of a complaint if by mail,

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

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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.

S 2. Subdivision 4 of section 241-a of the vehicle and traffic law, as amended by chapter 339 of the laws of 1987, is amended to read as follows:

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 OR A COPY OF A DECISION BY AN ADMINISTRATIVE LAW JUDGE. 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.

S 3. The vehicle and traffic law is amended by adding a new section 241-b to read as follows:

S 241-B. WRONGFUL TOWING. 1. FOR PURPOSES OF THIS SECTION, WRONGFUL TOWING SHALL MEAN THE TOWING OF A PERSON'S VEHICLE: (A) FOR A FINE OR PENALTY FOR A PARKING VIOLATION PREVIOUSLY SATISFIED OR WRONGFULLY IMPOSED AS DEFINED IN SECTION TWO HUNDRED FORTY-ONE-A OF THIS ARTICLE; (B) FOR A PARKING VIOLATION WHICH THE PERSON IS IN THE PROCESS OF CONTESTING WITH THE PARKING VIOLATIONS BUREAU; (C) FOR INACCURATELY BEING DEEMED A SCOFFLAW; (D) FOR ILLEGAL PARKING WHEN THE VEHICLE WAS LEGALLY PARKED AT THE TIME OF THE TOW; OR (E) FOR THE OPERATION OF AN UNLICENSED, UNINSURED OR UNREGISTERED VEHICLE WHEN SUCH VEHICLE WAS PROPERLY LICENSED, INSURED OR REGISTERED AT THE TIME OF THE TOW.

2. WHERE A PERSON'S VEHICLE IS WRONGFULLY TOWED, SUCH PERSON SHALL HAVE THE RIGHT TO HAVE AN EXPEDITED REVIEW BEFORE A PANEL OF THREE ADMINISTRATIVE LAW JUDGES AS PROVIDED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION TWO HUNDRED FORTY-ONE-A OF THIS ARTICLE. SUCH PANEL SHALL BE EMPOWERED TO COMPEL THE BUREAU OR OTHER RESPONSIBLE AGENT TO PRODUCE RECORDS AND OTHER EVIDENCE RELEVANT AND MATERIAL TO THE COMPLAINANT. THE COMPLAINANT OR PERSON SHALL BE REQUIRED TO SUBMIT PROOF WITH A COMPLAINT MADE UNDER THIS SECTION. SUCH PROOF SHALL CONSIST OF, AS IS APPROPRIATE, A COPY OF THE RECEIPT, MONEY ORDER, OR FRONT AND BACK OF A CANCELLED CHECK; A COPY OF A DECISION BY AN ADMINISTRATIVE LAW JUDGE, A COPY OF A POLICE REPORT OF STOLEN VEHICLE OR PLATES OR PROOF OF AN INSURANCE COMPANY PAYMENT FOR A STOLEN VEHICLE, OR A DEPARTMENT OF MOTOR VEHICLES RECEIPT FOR SURRENDERED PLATES OR A COPY OF A CURRENT REGISTRATION, LICENSE OR PROOF OF INSURANCE.

3. THE PANEL OF ADMINISTRATIVE LAW JUDGES SHALL BE EMPOWERED TO DIRECT THAT THE BUREAU'S AND/OR OTHER RESPONSIBLE AGENT'S RECORDS BE CHANGED, AS APPROPRIATE, TO ENSURE THAT NO FURTHER DEMAND IS MADE FOR THE FINE OR PENALTY PREVIOUSLY SATISFIED OR WRONGFULLY IMPOSED AND/OR THAT NO FURTHER WRONGFUL TOWING ACTION IS TAKEN AGAINST THE VEHICLE FOR THE SAME REASON AS THE FIRST WRONGFUL TOW AND THE BUREAU AND ANY OTHER RESPONSIBLE AGENT SHALL COMPLY WITH SUCH DIRECTIVE. FURTHER, THE PANEL OF ADMINISTRATIVE LAW JUDGES, UPON PETITION BY THE COMPLAINANT OR PERSON, MAY AT

ITS SOLE DISCRETION, DIRECT THE PARKING VIOLATIONS BUREAU OR OTHER RESPONSIBLE AGENT TO REFUND ANY MONEY PAID TO RELEASE THE WRONGFULLY TOWED VEHICLE AND TO PAY THE COMPLAINANT WHOSE VEHICLE WAS WRONGFULLY TOWED SUCH OUT-OF-POCKET EXPENSES, NOT TO EXCEED ONE HUNDRED FIFTY DOLLARS, AS THE PANEL DEEMS REASONABLE ONLY IN SUCH CASES WHERE THE COMPLAINANT OR PERSON SUFFICIENTLY DEMONSTRATES THAT HIS OR HER VEHICLE WAS WRONGFULLY TOWED. SUCH OUT-OF-POCKET EXPENSES SHALL INCLUDE, BUT NOT BE LIMITED TO, LOST WAGES, PROVIDED THE COMPLAINANT OR PERSON SUBMITS PROOF, SATISFACTORY TO THE PANEL OF SUCH EXPENSES INCURRED. THE PAYMENT OF ANY REFUND BY THE PARKING VIOLATIONS BUREAU OR OTHER RESPONSIBLE AGENT SHALL BE MADE WITHIN THIRTY DAYS OF THE DATE THE PANEL SO DIRECTED. AFTER FILING OF A PETITION BY THE COMPLAINANT OR PERSON AND SUBSEQUENT FINDING BY THE PANEL THAT PAYMENT WAS NOT TIMELY MADE, SUCH PAYMENT SHALL BE DOUBLED.

4. IF THE PERSON'S VEHICLE IS WRONGFULLY TOWED A SECOND OR SUBSEQUENT TIME FOR THE SAME REASON AS THE FIRST WRONGFUL TOW THEN SUCH PERSON HAS THE RIGHT TO REQUEST AND THE PANEL IS AUTHORIZED TO DIRECT THE PARKING VIOLATIONS BUREAU OR THE RESPONSIBLE AGENT TO REFUND ANY MONEY PAID TO RELEASE THE WRONGFULLY TOWED VEHICLE AND TO PAY THE COMPLAINANT OR PERSON DOUBLE THE AMOUNT OF HIS OR HER OUT-OF-POCKET EXPENSES.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.