

2301

2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law and the vehicle and traffic law, in relation to creating a traffic adjudication appeals bureau within the executive department; and to repeal section 228 of the vehicle and traffic law, relating to administrative review of hearing officer determinations by department of motor vehicles appeals boards

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

1 Section 1. The executive law is amended by adding a new article 5-A
2 to read as follows:

3 ARTICLE 5-A

4 TRAFFIC ADJUDICATION APPEALS BUREAU

5 SECTION 80. APPELLATE ADMINISTRATIVE REVIEW OF TRAFFIC INFRACTION
6 ADJUDICATIONS OF CERTAIN TRAFFIC VIOLATIONS BUREAUS.

7 81. DIRECTOR OF THE TRAFFIC ADJUDICATION APPEALS BUREAU; POWERS
8 AND DUTIES.

9 82. APPEALS OFFICERS OF THE TRAFFIC ADJUDICATION APPEALS
10 BUREAU.

11 83. RIGHT OF APPEAL TO THE TRAFFIC ADJUDICATION APPEALS BUREAU.

12 84. REVIEW AND DETERMINATION BY APPEALS BOARD OF THE TRAFFIC
13 ADJUDICATION APPEALS BUREAU.

14 85. APPEAL PROCEDURES FOR APPEALS TO THE TRAFFIC ADJUDICATION
15 APPEALS BUREAU.

16 S 80. APPELLATE ADMINISTRATIVE REVIEW OF TRAFFIC INFRACTION ADJUDI-
17 CATIONS OF CERTAIN TRAFFIC VIOLATIONS BUREAUS. 1. (A) THERE IS HEREBY
18 CREATED WITHIN THE EXECUTIVE DEPARTMENT A SEPARATE BUREAU WHICH SHALL BE
19 KNOWN AS THE "TRAFFIC ADJUDICATION APPEALS BUREAU". THE APPEALS BUREAU
20 SHALL RECEIVE, CONSIDER AND DETERMINE APPEALS FROM DETERMINATIONS OF
21 HEARING OFFICERS OF TRAFFIC VIOLATIONS BUREAUS DESCRIBED IN ARTICLE
22 TWO-A OF THE VEHICLE AND TRAFFIC LAW. THE CENTRAL OFFICE OF THE BUREAU

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

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SHALL BE LOCATED IN ALBANY, AND REGIONAL OFFICES OF THE BUREAU SHALL BE ESTABLISHED AND MAINTAINED IN SUCH NUMBERS AND LOCATIONS AS THE DIRECTOR OF THE BUREAU MAY DETERMINE WITHIN AMOUNTS MADE AVAILABLE BY APPROPRIATION.

(B) THE HEAD OF THE APPEALS BUREAU SHALL BE A DIRECTOR, WHO SHALL BE APPOINTED BY THE GOVERNOR, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, TO SERVE FOR A TERM OF SIX YEARS, AND UNTIL HIS OR HER SUCCESSOR HAS BEEN APPOINTED. SUCH DIRECTOR SHALL RECEIVE A SALARY IN THE SAME AMOUNT AS THAT RECEIVED BY A STATE OFFICER DESIGNATED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-NINE OF THIS CHAPTER.

2. (A) IN LIEU OF, OR IN ADDITION TO, ANY OTHER GROUNDS FOR APPEAL, A PERSON MAY APPEAL TO THE APPEALS BUREAU ON THE GROUND THAT ONE OR MORE MINIMUM PROCEDURES, ESTABLISHED BY OR PURSUANT TO LAW, FOR THE CONDUCT OF A HEARING FOR THE ADJUDICATION OF A TRAFFIC INFRACTION HAVE NOT BEEN FOLLOWED. WHERE THE APPEALS BUREAU FINDS THAT ONE OR MORE OF SUCH MINIMUM PROCEDURES FOR THE CONDUCT OF A HEARING FOR THE ADJUDICATION OF A TRAFFIC INFRACTION, ESTABLISHED BY OR PURSUANT TO SUBDIVISION ONE OF SECTION TWO HUNDRED TWENTY-SEVEN OF THE VEHICLE AND TRAFFIC LAW, HAVE NOT BEEN FOLLOWED BY THE HEARING OFFICER WHO ADJUDICATED THE TRAFFIC INFRACTION, OR HAVE NOT BEEN FOLLOWED BY THE TRAFFIC VIOLATIONS BUREAU OR BY THE DEPARTMENT OR COMMISSIONER OF MOTOR VEHICLES: (I) IT SHALL AWARD THE APPELLANT HIS OR HER EXPENSES, INCLUDING AN AMOUNT FOR THE LOST TIME, INCONVENIENCE AND ANNOYANCE, AS WELL AS OUT-OF-POCKET COSTS AND FEES, IN TAKING SUCH APPEAL TO IT; HOWEVER, THE AMOUNT OF SUCH AWARD FIXED BY IT SHALL NOT EXCEED THE AMOUNT OF THE ORIGINAL FINE, AND PAYMENT OF SUCH AWARD TO THE APPELLANT SHALL NOT BE MADE BY IT BUT SHALL BE MADE BY THE DEPARTMENT OF MOTOR VEHICLES UPON THE PRESENTATION TO SUCH DEPARTMENT OF A VOUCHER ISSUED BY THE APPEALS BUREAU; AND (II) IF THE APPEALS BUREAU HAS FOUND OTHER INSTANCES WHERE THE SAME HEARING OFFICER, BUREAU, COMMISSIONER OR DEPARTMENT HAS NOT FOLLOWED THE REQUIRED MINIMUM PROCEDURES ESTABLISHED BY OR PURSUANT TO LAW FOR THE CONDUCT OF A HEARING, THE APPEALS BUREAU MAY ISSUE AN ORDER TO SUCH OFFICER, BUREAU, COMMISSIONER AND/OR DEPARTMENT, TO CEASE AND DESIST FROM SUCH IMPROPER CONDUCT AND TO COMPLY WITH MINIMUM PROCEDURES ESTABLISHED BY OR PURSUANT TO LAW.

(B) THE APPEALS BUREAU SHALL HAVE STANDING TO BRING A PROCEEDING UNDER ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES TO COMPEL ANY SUCH OFFICER, BUREAU, COMMISSIONER AND/OR DEPARTMENT TO COMPLY WITH ITS CEASE AND DESIST ORDERS. THE ISSUANCE OF A CEASE AND DESIST ORDER, OR THE COMMENCEMENT OF AN ARTICLE SEVENTY-EIGHT PROCEEDING, SHALL NOT BE A PREREQUISITE TO THE TAKING OF ANY ACTION OR ENFORCEMENT OF ANY REMEDY OTHERWISE PERMITTED, BUT SHALL BE CUMULATIVE TO ANY OTHER SUCH ACTION OR REMEDY.

(C) THE APPEALS BUREAU IS HEREBY EMPOWERED TO COMPEL THE COMMISSIONER AND DEPARTMENT OF MOTOR VEHICLES TO PRODUCE RECORDS AND OTHER EVIDENCE RELEVANT AND MATERIAL TO ANY APPEAL, OR RELEVANT AND MATERIAL TO THE MAKING OF ANY FINDING AUTHORIZED TO BE MADE BY THIS ARTICLE.

S 81. DIRECTOR OF THE TRAFFIC ADJUDICATION APPEALS BUREAU; POWERS AND DUTIES. THE DIRECTOR OF THE TRAFFIC ADJUDICATION APPEALS BUREAU SHALL BE THE ADMINISTRATIVE HEAD OF THE BUREAU AND SHALL:

1. APPOINT ONE OR MORE GROUPS OF THREE OR MORE APPEALS OFFICERS EACH, WHICH SHALL CONSTITUTE ONE OR MORE APPEALS BOARDS UNDER THE JURISDICTION, SUPERVISION AND CONTROL OF THE APPEALS BUREAU, AND MAY PRESCRIBE THEIR POWERS AND DUTIES AND FIX THEIR COMPENSATION WITHIN THE AMOUNT APPROPRIATED THEREFOR, SUBJECT TO THE PROVISIONS OF THE CIVIL SERVICE LAW AND ANY APPLICABLE COLLECTIVE BARGAINING AGREEMENT;

1 2. SELECT A CHAIRMAN FOR EACH APPEALS BOARD FROM THE GROUP OF APPEALS
2 OFFICERS SO APPOINTED;

3 3. DESIGNATE SUCH OTHER PERSONNEL, SUBJECT TO THE PROVISIONS OF THE
4 CIVIL SERVICE LAW AND ANY APPLICABLE COLLECTIVE BARGAINING AGREEMENT, AS
5 MAY BE NECESSARY TO ASSIST THE DIRECTOR OF THE APPEALS BUREAU, OR ASSIST
6 AN APPEALS BOARD, IN CARRYING OUT HIS OR HER OR ITS DUTIES.

7 S 82. APPEALS OFFICERS OF THE TRAFFIC ADJUDICATION APPEALS BUREAU.
8 EACH APPEALS OFFICER SHALL HAVE BEEN ADMITTED TO THE PRACTICE OF LAW IN
9 THIS STATE AND SHALL NOT BE AN EMPLOYEE OF THE DEPARTMENT OF MOTOR VEHI-
10 CLES OR DEPARTMENT OF TRANSPORTATION.

11 S 83. RIGHT OF APPEAL TO THE TRAFFIC ADJUDICATION APPEALS BUREAU. 1.
12 ANY PERSON WHO IS AGGRIEVED BY A DETERMINATION OF A HEARING OFFICER OF A
13 TRAFFIC VIOLATIONS BUREAU DESCRIBED IN ARTICLE TWO-A OF THE VEHICLE AND
14 TRAFFIC LAW MAY APPEAL SUCH DETERMINATION PURSUANT TO THE PROVISIONS OF
15 THIS ARTICLE.

16 2. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A TRANSCRIPT OF THE
17 HEARING RESULTING IN THE DETERMINATION APPEALED FROM MUST BE SUBMITTED
18 TO THE TRAFFIC ADJUDICATION APPEALS BUREAU ON ANY SUCH APPEAL.

19 3. IF THE ONLY ISSUE RAISED ON APPEAL IS THE APPROPRIATENESS OF THE
20 PENALTY IMPOSED, THE APPELLANT, IN HIS OR HER DISCRETION, MAY SUBMIT
21 SUCH APPEAL WITHOUT A TRANSCRIPT OF THE HEARING. IN SUCH EVENT, THE
22 DECISION OF THE APPEALS BOARD MAY BE BASED SOLELY ON THE APPEAL PAPERS
23 AND THE RECORDS OF THE DEPARTMENT OF MOTOR VEHICLES AND OF THE TRAFFIC
24 ADJUDICATION APPEALS BUREAU, AND SUCH DECISION SHALL NOT BE SUBJECT TO
25 JUDICIAL REVIEW.

26 4. WHERE A TRANSCRIPT OF THE HEARING IS SUBMITTED AT THE TIME AN
27 APPEAL IS FILED, THE DETERMINATION OF THE APPEALS BOARD WILL BE SUBJECT
28 TO JUDICIAL REVIEW AS PRESCRIBED IN SUBDIVISION FIVE OF SECTION EIGHTY-
29 FIVE OF THIS ARTICLE.

30 S 84. REVIEW AND DETERMINATION BY APPEALS BOARD OF THE TRAFFIC ADJUDI-
31 CATION APPEALS BUREAU. 1. EACH APPEAL FILED PURSUANT TO THIS ARTICLE
32 SHALL BE REVIEWED BY AN APPEALS BOARD, WHICH SHALL MAKE A DETERMINATION
33 OF SUCH APPEAL, AND SHALL CAUSE AN APPROPRIATE ORDER TO BE ENTERED IN
34 THE RECORDS OF THE TRAFFIC ADJUDICATION APPEALS BUREAU. THE TRAFFIC
35 ADJUDICATION APPEALS BUREAU SHALL TRANSMIT A COPY OF SUCH ORDER TO THE
36 COMMISSIONER OF MOTOR VEHICLES, AND SUCH COMMISSIONER SHALL CAUSE SUCH
37 ORDER TO BE ENTERED IN THE RECORDS OF THE DEPARTMENT OF MOTOR VEHICLES.

38 2. NO APPEAL SHALL BE REVIEWED IF IT IS FILED MORE THAN THIRTY DAYS
39 AFTER NOTICE WAS GIVEN OF THE DETERMINATION APPEALED FROM. THE APPELLANT
40 SHALL SUBMIT TOGETHER WITH SUCH APPEAL A COPY OF THE NOTICE OF DETERMI-
41 NATION ISSUED BY THE DEPARTMENT OF MOTOR VEHICLES SHOWING THE DATE THE
42 NOTICE OF DETERMINATION WAS GIVEN.

43 S 85. APPEAL PROCEDURES FOR APPEALS TO THE TRAFFIC ADJUDICATION
44 APPEALS BUREAU. 1. ANY PERSON DESIRING TO FILE AN APPEAL FROM AN ADVERSE
45 DETERMINATION PURSUANT TO THIS ARTICLE, SHALL DO SO IN A FORM AND MANNER
46 PROVIDED BY THE DIRECTOR OF THE TRAFFIC ADJUDICATION APPEALS BUREAU
47 AFTER SUCH DIRECTOR CONSULTS WITH THE COMMISSIONER OF MOTOR VEHICLES.
48 THE TRANSCRIPT OF ANY HEARING WHICH FORMED THE BASIS FOR SUCH DETERMI-
49 NATION WILL BE REVIEWED ONLY IF IT IS SUBMITTED BY THE APPELLANT. AN
50 APPEAL SHALL NOT BE DEEMED TO BE FINALLY SUBMITTED UNTIL THE APPELLANT
51 HAS SUBMITTED ALL FORMS OR DOCUMENTS REQUIRED TO BE SUBMITTED BY THE
52 DIRECTOR OR BY THIS ARTICLE. IF THE APPELLANT IS NOT ABLE TO SUBMIT ANY
53 REQUIRED FORM OR DOCUMENT BECAUSE OF THE REFUSAL OR FAILURE OF THE
54 DEPARTMENT OF MOTOR VEHICLES TO SUPPLY SUCH FORM OR DOCUMENT TO THE
55 APPELLANT UPON THE APPELLANT'S REQUEST AND WILLINGNESS TO TENDER ANY
56 AUTHORIZED FEE REQUIRED BY SUCH DEPARTMENT, THE APPELLANT SHALL FURNISH

1 AN AFFIDAVIT OF SUCH FACT TO THE DIRECTOR AND THE DIRECTOR SHALL COMPEL
2 THE DEPARTMENT OF MOTOR VEHICLES TO PRODUCE SUCH REQUIRED RECORDS, OR AN
3 AUTHENTICATED COPY THEREOF, FREE OF CHARGE FOR USE BY THE TRAFFIC ADJU-
4 DICATION APPEALS BUREAU OR AN APPEALS BOARD THEREOF UPON THE APPEAL. IN
5 SUCH CASE, AN APPEAL SHALL BE DEEMED FINALLY SUBMITTED AS OF THE DATE
6 THE DIRECTOR RECEIVED THE AFFIDAVIT FROM THE APPELLANT THAT THE APPEL-
7 LANT WAS UNABLE TO OBTAIN A REQUIRED RECORD FROM THE DEPARTMENT OF MOTOR
8 VEHICLES, PROVIDED THAT ALL OTHER FORMS AND DOCUMENTS REQUIRED TO BE
9 SUBMITTED HAVE BEEN SUBMITTED OR SIMILAR AFFIDAVIT GIVEN WITH RESPECT TO
10 INABILITY TO OBTAIN SAME FROM THE DEPARTMENT OF MOTOR VEHICLES.

11 2. TRANSCRIPTS OF THE RECORD OF ANY HEARING MAY BE OBTAINED AT THE
12 COST TO THE DEPARTMENT OF MOTOR VEHICLES, IF PREPARED BY SUCH DEPART-
13 MENT, OR AT THE RATE SPECIFIED IN THE CONTRACT BETWEEN SUCH DEPARTMENT
14 AND THE CONTRACTOR, IF PREPARED BY A PRIVATE CONTRACTOR. THE AMOUNT PAID
15 AT SUCH COST OR RATE BY A PERSON CONVICTED WHO SUBMITS A TRANSCRIPT OF
16 THE HEARING WHICH RESULTED IN THE DETERMINATION, UPON AN APPEAL FROM
17 SUCH DETERMINATION, SHALL BE REFUNDED BY THE DEPARTMENT OF MOTOR VEHI-
18 CLES UPON THE RECEIPT BY IT OF AN ORDER, OR COPY THEREOF, FROM THE TRAF-
19 FIC ADJUDICATION APPEALS BUREAU DISMISSING THE CHARGES UPON THE DETERMI-
20 NATION OF SUCH APPEAL.

21 3. THE FEE FOR FILING AN APPEAL SHALL BE TEN DOLLARS PAYABLE TO THE
22 TRAFFIC ADJUDICATION APPEALS BUREAU. NO APPEAL SHALL BE ACCEPTED UNLESS
23 THE REQUIRED FEE HAS BEEN PAID TO SUCH BUREAU. SUCH FEES SHALL BE PAID
24 BY SUCH APPEALS BUREAU TO THE DEPARTMENT OF AUDIT AND CONTROL TO THE
25 CREDIT OF THE JUSTICE COURT FUND. AFTER SUCH AUDIT AS SHALL BE REQUIRED
26 BY THE COMPTROLLER, SUCH FEES SHALL BE CREDITED TO THE GENERAL FUND OF
27 THE STATE.

28 4. (A) WHENEVER A DETERMINATION HAS NOT BEEN MADE WITHIN THIRTY DAYS
29 AFTER AN APPEAL HAS BEEN FINALLY SUBMITTED, A STAY OF EXECUTION WILL BE
30 DEEMED GRANTED BY OPERATION OF LAW, AND THE LICENSE, CERTIFICATE, PERMIT
31 OR PRIVILEGE AFFECTED WILL BE AUTOMATICALLY RESTORED PENDING FINAL
32 DETERMINATION.

33 (B) THE COMMISSIONER OF MOTOR VEHICLES SHALL COOPERATE WITH THE DIREC-
34 TOR OF THE APPEALS BUREAU IN DEVISING MEANS OF COMMUNICATION BETWEEN THE
35 DEPARTMENT OF MOTOR VEHICLES AND THE TRAFFIC ADJUDICATION APPEALS BUREAU
36 TO EFFECTUATE THE PURPOSES AND PROVISIONS OF THIS ARTICLE. SUCH MEANS
37 MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, A COMPUTER NETWORK WHEREBY
38 INFORMATION MAY BE SHARED, EXCHANGED AND/OR INPUTTED BY AND BETWEEN THE
39 DEPARTMENT OF MOTOR VEHICLES AND THE TRAFFIC ADJUDICATION APPEALS
40 BUREAU. IF SUCH A NETWORK IS ESTABLISHED, ANY NOTICE OR RECORD REQUIRED
41 TO BE PRODUCED BY, OR SENT BY OR TO, THE DEPARTMENT OF MOTOR VEHICLES
42 MAY BE TRANSMITTED BY MEANS OF SUCH NETWORK.

43 5. (A) NO DETERMINATION OF A HEARING OFFICER WHICH IS APPEALABLE UNDER
44 THE PROVISIONS OF THIS ARTICLE SHALL BE REVIEWED IN ANY COURT UNLESS AN
45 APPEAL HAS BEEN FILED AND DETERMINED IN ACCORDANCE WITH THIS ARTICLE.

46 (B) A DETERMINATION OF THE APPEALS BOARD IN ANY CASE WHERE A TRAN-
47 SCRIPT OF THE HEARING HAS BEEN SUBMITTED SHALL BE SUBJECT TO REVIEW
48 PURSUANT TO THE PROVISIONS OF ARTICLE SEVENTY-EIGHT OF THE CIVIL PRAC-
49 TICE LAW AND RULES. PROVIDED, HOWEVER, A STATEMENT BY THE APPEALS OFFI-
50 CER AT THE CONCLUSION OF THE HEARING INDICATING THAT THE CHARGES HAVE
51 BEEN SUSTAINED AND ANNOUNCING THE PENALTY IMPOSED, TOGETHER WITH A
52 SUMMARY OF THE REASONS THE APPEAL WAS DENIED BY THE APPEALS BOARD, SHALL
53 CONSTITUTE SUFFICIENT FINDINGS FOR THE PURPOSE OF SUCH REVIEW.

54 S 2. Section 228 of the vehicle and traffic law is REPEALED and a new
55 section 228 is added to read as follows:

1 S 228. ADMINISTRATIVE REVIEW. ADMINISTRATIVE REVIEW OF THE DETERMI-
2 NATION OF A HEARING OFFICER SHALL BE HAD BY MEANS OF AN APPEAL TO THE
3 TRAFFIC ADJUDICATION APPEALS BUREAU IN THE EXECUTIVE DEPARTMENT, AS
4 PROVIDED IN ARTICLE FIVE-A OF THE EXECUTIVE LAW. THE COMMISSIONER AND
5 DEPARTMENT SHALL COOPERATE AND RENDER ASSISTANCE: (A) TO ANY PERSON
6 CONVICTED OF A TRAFFIC INFRACTION UPON THE DETERMINATION OF A HEARING
7 OFFICER, WHO WISHES TO APPEAL SUCH DETERMINATION TO THE APPEALS BUREAU,
8 BY PROVIDING FORMS, INSTRUCTIONS AND RECORDS, SUITABLE TO FILE SUCH
9 APPEAL WITH THE APPEALS BUREAU, IN COOPERATION WITH THE REQUIREMENTS OF
10 THE DIRECTOR OF THE APPEALS BUREAU; AND (B) TO THE DIRECTOR OF THE
11 APPEALS BUREAU TO IMPLEMENT THE PURPOSES AND PROVISIONS OF ARTICLE
12 FIVE-A OF THE EXECUTIVE LAW.

13 S 3. Subdivision 1 of section 227 of the vehicle and traffic law, as
14 amended by chapter 337 of the laws of 1970, is amended to read as
15 follows:

16 1. A. Every hearing for the adjudication of a traffic infraction, as
17 provided by this article, shall be held before a hearing officer
18 appointed by the commissioner. The burden of proof shall be upon the
19 people, and no charge may be established except by clear and convincing
20 evidence. The commissioner [may] SHALL prescribe, by rule or regulation,
21 the procedures for the conduct of such hearings.

22 B. SUCH PROCEDURES FOR THE CONDUCT OF SUCH HEARINGS SHALL, AT A MINI-
23 MUM:

24 (I) PROHIBIT THE COMPILING OF PERIODIC STATISTICS ESTABLISHING
25 CONVICTION RATES.

26 (II) PROHIBIT THE REVIEW OR RATING OF HEARING OFFICERS BASED UPON ANY
27 CONVICTION RATE.

28 (III) PROHIBIT ANY REQUIREMENT THAT HEARING OFFICERS PROVIDE TO THE
29 COMMISSIONER OR TO ADMINISTRATIVE OR SUPERVISORY EMPLOYEES OF THE
30 DEPARTMENT GREATER OR ANY DIFFERENT JUSTIFICATION FOR THEIR DETERMI-
31 NATIONS THAT THE CHARGES HAVE NOT BEEN ESTABLISHED FROM THEIR DETERMI-
32 NATIONS THAT THE CHARGES HAVE BEEN ESTABLISHED.

33 (IV) PROHIBIT HEARING OFFICERS FROM USING LEADING QUESTIONS IN THE
34 DIRECT EXAMINATION OF POLICE OFFICERS.

35 (V) REQUIRE THE HEARING OFFICER TO ADVISE THE ACCUSED OF HIS RIGHT TO
36 REMAIN SILENT AND HIS RIGHT TO BE REPRESENTED BY COUNSEL, AND WHERE
37 APPROPRIATE, TO EXPLAIN THE ELEMENTS OF THE OFFENSE AND AVAILABLE
38 DEFENSES FOR AN ACCUSED WHO IS NOT REPRESENTED BY COUNSEL.

39 (VI) REQUIRE THAT THE RULES OF EVIDENCE BE ADHERED TO IN ALL
40 PROCEEDINGS IN WHICH EITHER SIDE IS REPRESENTED BY COUNSEL.

41 S 4. a. The director of the traffic adjudication appeals bureau shall
42 report annually on or before the thirty-first of January, beginning with
43 the calendar year next succeeding the year this act takes effect, to the
44 governor, the majority leader of the senate, and the speaker of the
45 assembly, evaluating the functioning and operations of the new traffic
46 adjudication appeals bureau created by this act.

47 b. Each annual report shall specifically address how well the imple-
48 mentation of this act alleviates the problems and criticisms of the
49 former administrative adjudication system of the state department of
50 motor vehicles, described by the task force on administrative adjudi-
51 cation of the New York state bar association in its report dated July
52 14, 1988.

53 c. Each such report also shall contain statistical tabulations and
54 appropriate commentary thereon, showing, for each traffic violations
55 bureau:

56 (i) the total number of appeals received by the new appeals bureau;

(ii) the number of appeals in which it was alleged that one or more minimum procedures, established by or pursuant to law, for the conduct of a hearing for the adjudication of a traffic infraction have not been followed and the number of such appeals in which these allegations were found to have any merit (the success rate) and where found to have merit, the total amount awarded to all appellants for their expenses, out-of-pocket costs and fees, pursuant to subparagraph (i) of paragraph (a) of subdivision 2 of section 80 of the executive law, as added by this act;

(iii) the number of cease and desist orders issued by the new appeals bureau pursuant to subparagraph (ii) of paragraph (a) of subdivision 2 of section 80 of the executive law, as added by this act, the reason or reasons such orders were issued, and the number of proceedings brought by the new appeals bureau, pursuant to article 78 of the civil practice law and rules, to enforce its cease and desist orders;

(iv) the number of, and a description of, any other enforcement or persuasion mechanisms utilized;

(v) an assessment of the degree of compliance by each traffic violations bureau with the minimum procedures established by or pursuant to law for the conduct of hearings for the adjudication of traffic infractions, based, in part, upon the number of complaints received and how such complaints were (or were not) resolved; and

(vi) any other relevant facts, statistics and commentary with respect to the foregoing.

In addition, the director of the traffic adjudication appeals bureau may propose to the legislature the consideration or enactment of such additional legislation as in his or her opinion will further address or alleviate the problems and criticisms found in the above-referenced report of the bar association task force.

S 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and sections one through three of this act shall apply by the terms of this act only to appeals which are finally submitted or deemed to be finally submitted on or after the effective date of this act; provided, however, that the provisions of section 228 of the vehicle and traffic law repealed by section two of this act shall continue to apply to any appeal which is finally submitted or deemed to have been finally submitted to a department of motor vehicles appeals board before the effective date of this act, but only until such appeal is determined by such appeals board; and any remand ordered by a court of competent jurisdiction pursuant to a proceeding under article 78 of the civil practice law and rules which has not yet been re-submitted to a department of motor vehicles appeals board before the effective date of this act, shall be referred to the traffic adjudication appeals bureau in the executive department for redetermination pursuant to the order of remand.