

2313

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;
8 POWERS AND DUTIES.

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

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

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

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

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

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

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1 TWO-A OF THE VEHICLE AND TRAFFIC LAW. THE CENTRAL OFFICE OF THE BUREAU
2 SHALL BE LOCATED IN ALBANY, AND REGIONAL OFFICES OF THE BUREAU SHALL BE
3 ESTABLISHED AND MAINTAINED IN SUCH NUMBERS AND LOCATIONS AS THE DIRECTOR
4 OF THE BUREAU MAY DETERMINE WITHIN AMOUNTS MADE AVAILABLE BY APPROPRI-
5 ATION.

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

13 2. (A) IN LIEU OF, OR IN ADDITION TO, ANY OTHER GROUNDS FOR APPEAL, A
14 PERSON MAY APPEAL TO THE APPEALS BUREAU ON THE GROUND THAT ONE OR MORE
15 MINIMUM PROCEDURES, ESTABLISHED BY OR PURSUANT TO LAW, FOR THE CONDUCT
16 OF A HEARING FOR THE ADJUDICATION OF A TRAFFIC INFRACTION HAVE NOT BEEN
17 FOLLOWED. WHERE THE APPEALS BUREAU FINDS THAT ONE OR MORE OF SUCH MINI-
18 MUM PROCEDURES FOR THE CONDUCT OF A HEARING FOR THE ADJUDICATION OF A
19 TRAFFIC INFRACTION, ESTABLISHED BY OR PURSUANT TO SUBDIVISION ONE OF
20 SECTION TWO HUNDRED TWENTY-SEVEN OF THE VEHICLE AND TRAFFIC LAW, HAVE
21 NOT BEEN FOLLOWED BY THE HEARING OFFICER WHO ADJUDICATED THE TRAFFIC
22 INFRACTION, OR HAVE NOT BEEN FOLLOWED BY THE TRAFFIC VIOLATIONS BUREAU
23 OR BY THE DEPARTMENT OR COMMISSIONER OF MOTOR VEHICLES: (I) IT SHALL
24 AWARD THE APPELLANT HIS OR HER EXPENSES, INCLUDING AN AMOUNT FOR THE
25 LOST TIME, INCONVENIENCE AND ANNOYANCE, AS WELL AS OUT-OF-POCKET COSTS
26 AND FEES, IN TAKING SUCH APPEAL TO IT; HOWEVER, THE AMOUNT OF SUCH AWARD
27 FIXED BY IT SHALL NOT EXCEED THE AMOUNT OF THE ORIGINAL FINE, AND
28 PAYMENT OF SUCH AWARD TO THE APPELLANT SHALL NOT BE MADE BY IT BUT SHALL
29 BE MADE BY THE DEPARTMENT OF MOTOR VEHICLES UPON THE PRESENTATION TO
30 SUCH DEPARTMENT OF A VOUCHER ISSUED BY THE APPEALS BUREAU; AND (II) IF
31 THE APPEALS BUREAU HAS FOUND OTHER INSTANCES WHERE THE SAME HEARING
32 OFFICER, BUREAU, COMMISSIONER OR DEPARTMENT HAS NOT FOLLOWED THE
33 REQUIRED MINIMUM PROCEDURES ESTABLISHED BY OR PURSUANT TO LAW FOR THE
34 CONDUCT OF A HEARING, THE APPEALS BUREAU MAY ISSUE AN ORDER TO SUCH
35 OFFICER, BUREAU, COMMISSIONER AND/OR DEPARTMENT, TO CEASE AND DESIST
36 FROM SUCH IMPROPER CONDUCT AND TO COMPLY WITH MINIMUM PROCEDURES ESTAB-
37 LISHED BY OR PURSUANT TO LAW.

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

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

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

53 1. APPOINT ONE OR MORE GROUPS OF THREE OR MORE APPEALS OFFICERS EACH,
54 WHICH SHALL CONSTITUTE ONE OR MORE APPEALS BOARDS UNDER THE JURISDIC-
55 TION, SUPERVISION AND CONTROL OF THE APPEALS BUREAU, AND MAY PRESCRIBE
56 THEIR POWERS AND DUTIES AND FIX THEIR COMPENSATION WITHIN THE AMOUNT

1 APPROPRIATED THEREFOR, SUBJECT TO THE PROVISIONS OF THE CIVIL SERVICE
2 LAW AND ANY APPLICABLE COLLECTIVE BARGAINING AGREEMENT;

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

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

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

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

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

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

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

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

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

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

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

13 2. TRANSCRIPTS OF THE RECORD OF ANY HEARING MAY BE OBTAINED AT THE
14 COST TO THE DEPARTMENT OF MOTOR VEHICLES, IF PREPARED BY THE DEPARTMENT,
15 OR AT THE RATE SPECIFIED IN THE CONTRACT BETWEEN THE DEPARTMENT AND THE
16 CONTRACTOR, IF PREPARED BY A PRIVATE CONTRACTOR. THE AMOUNT PAID AT SUCH
17 COST OR RATE BY A PERSON CONVICTED WHO SUBMITS A TRANSCRIPT OF THE HEAR-
18 ING WHICH RESULTED IN THE DETERMINATION, UPON AN APPEAL FROM SUCH DETER-
19 MINATION, SHALL BE REFUNDED BY THE DEPARTMENT OF MOTOR VEHICLES UPON THE
20 RECEIPT BY IT OF AN ORDER, OR COPY THEREOF, FROM THE TRAFFIC ADJUDI-
21 CATION APPEALS BUREAU DISMISSING THE CHARGES UPON THE DETERMINATION OF
22 SUCH APPEAL.

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

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

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

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

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

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

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

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

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

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

26 (I) PROHIBIT THE COMPILING OF PERIODIC STATISTICS ESTABLISHING
27 CONVICTION RATES.

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

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

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

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

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

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

49 b. Each annual report shall specifically address how well the imple-
50 mentation of this act alleviates the problems and criticisms of the
51 former administrative adjudication system of the state department of
52 motor vehicles, described by the task force on administrative adjudi-
53 cation of the New York state bar association in its report dated July
54 14, 1988.

1 c. Each such report also shall contain statistical tabulations and
2 appropriate commentary thereon, showing, for each traffic violations
3 bureau:

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

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

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

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

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

29 In addition, the director of the traffic adjudications appeals bureau
30 may propose to the legislature the consideration or enactment of such
31 additional legislation as in his opinion will further address or allevi-
32 ate the problems and criticisms found in the above-referenced report of
33 the bar association task force.

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