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

5521

2011-2012 Regular Sessions

I N S E N A T E

May 27, 2011

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

AN ACT to amend the county law and the New York city charter, in relation to the docketing of adjudications 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.

LBD11260-01-1

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

S 2. Paragraph 2 of subdivision (g) of section 2203 of the New York city charter, as added by section 15 of question 2 of local law number 60 of the city of New York for the year 2010, is amended to read as follows:

(2) 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. 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.

S 3. Paragraphs 3 and 4 of subdivision (g) of section 2203 of the New York city charter are renumbered paragraphs 9 and 10 and six new paragraphs 3, 4, 5, 6, 7 and 8 are added to read as follows:

(3) 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.

(4) 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. ENTRY OF A JUDGMENT IN ACCORDANCE WITH THIS PARAGRAPH SHALL NOT LIMIT THE APPLICATION OF ANY OTHER REMEDIES OR PENALTIES PROVIDED FOR THE ENFORCEMENT OF LAWS OR RULES UNDER THE JURISDICTION OF THE DEPARTMENT.

(5) 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.

(6) A JUDGMENT ENTERED PURSUANT TO PARAGRAPH FOUR OF THIS SUBDIVISION SHALL REMAIN IN FULL FORCE AND EFFECT FOR EIGHT YEARS.

(7) THE DEPARTMENT SHALL NOT ENTER ANY FINAL DECISION OR ORDER PURSUANT TO THE PROVISIONS OF PARAGRAPH FOUR OF THIS SUBDIVISION 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 PARAGRAPH EIGHT OF THIS SUBDIVISION.

(8)(I) 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.

(II) SERVICE OF A NOTICE OF VIOLATION THAT ALLEGES A VIOLATION BY A LICENSEE OF ANY LAW OR RULES OF THE COMMISSIONER MAY BE MADE BY DELIVERING SUCH NOTICE 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.

(III) SUCH NOTICE MAY ONLY BE DELIVERED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH 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.

(IV) WHEN A COPY OF SUCH NOTICE HAS BEEN DELIVERED PURSUANT TO SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH, 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.

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

S 4. This act shall take effect immediately.