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

6793--A

I N S E N A T E

March 22, 2012

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

LBD11260-03-2

S 2. 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:

(g) (1) Notwithstanding any inconsistent provision of law, the department shall be authorized, upon due notice and hearing, to impose civil penalties for the violation of any laws or rules the enforcement of which is within the jurisdiction of the department pursuant to this charter, the administrative code or any other general, special or local law. The department shall have the power to render decisions and orders and to impose civil penalties for all such violations. Except to the extent that dollar limits are otherwise specifically provided, such civil penalties shall not exceed five hundred dollars for each violation. All proceedings authorized pursuant to this subdivision shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

(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.

(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 FOR THE PURPOSES OF THIS VIOLATION AND SHALL BE GROUNDS FOR RENDERING A DEFAULT DECISION AND ORDER IMPOSING A PENALTY UP TO 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.

(5) THE DEPARTMENT SHALL INCLUDE WITH THE NOTICE OF ENTRY OF THE JUDGMENT IT SERVES ON THE RESPONDENT A NOTICE, IN A FORM TO BE DETERMINED BY THE COMMISSIONER, THAT:

(I) A JUDGMENT HAS BEEN 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

(II) THE RESPONDENT SHALL HAVE THE OPPORTUNITY TO REQUEST A STAY OF ENFORCEMENT OF THE JUDGMENT FOR SETTLEMENT DISCUSSIONS IN ACCORDANCE WITH THE RULES OF THE DEPARTMENT FOR UP TO FORTY-FIVE DAYS AFTER THE ENTRY OF THE JUDGMENT.

ENTRY OF A JUDGMENT 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.

(6) NOTWITHSTANDING THE FOREGOING PROVISIONS, BEFORE A JUDGMENT BASED UPON A DEFAULT MAY BE SO ENTERED, THE DEPARTMENT MUST HAVE NOTIFIED THE RESPONDENT:

(I) OF THE DEFAULT DECISION AND ORDER AND 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.

THE COMMISSIONER SHALL DETERMINE THE FORM OF SUCH NOTICE. IF THE RESPONDENT IS A LICENSEE, NOTICE SHALL BE PROVIDED BY FIRST CLASS MAIL AT THE ADDRESS THE LICENSEE HAS FILED WITH THE DEPARTMENT PURSUANT TO SECTION 20-112 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK. FOR ALL OTHER RESPONDENTS, THE NOTICE SHALL BE SERVED IN THE SAME MANNER SET FORTH FOR SERVICE OF A NOTICE OF VIOLATION IN PARAGRAPH EIGHT OF THIS SUBDIVISION.

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

(8) THE DEPARTMENT SHALL NOT ENTER ANY FINAL DECISION OR ORDER PURSUANT TO 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, FOR LICENSEES, AS PROVIDED IN PARAGRAPH NINE OF THIS SUBDIVISION.

(9) (I) THE DEPARTMENT SHALL SERVE A NOTICE OF VIOLATION BY MAILING A COPY OF SUCH NOTICE TO THE ADDRESS THE LICENSEE HAS FILED WITH THE DEPARTMENT PURSUANT TO SECTION 20-112 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK. THE DEPARTMENT SHALL ALSO SERVE A NOTICE OF VIOLATION BY DELIVERING SUCH NOTICE TO A PERSON EMPLOYED BY THE RESPONDENT AT THE PREMISES AT WHICH THE RESPONDENT CONDUCTS THE BUSINESS THE OPERATION OF WHICH GAVE RISE TO THE VIOLATION. IN THE CASE OF A BUSINESS THAT IS CARRIED OUT AT LARGE AND NOT AT A FIXED PLACE OF BUSINESS OR THAT HAS FILED WITH THE DEPARTMENT AN OUT-OF-STATE ADDRESS PURSUANT TO SECTION 20-112 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, THE DEPARTMENT SHALL ALSO SERVE A LICENSEE OR EMPLOYEE OF SUCH BUSINESS AT THE LOCATION WHICH GAVE RISE TO THE VIOLATION, THE SECRETARY OF STATE PURSUANT TO SECTION THREE HUNDRED FOUR OF THE BUSINESS CORPORATION LAW OR AN AGENT DESIGNATED FOR SERVICE PURSUANT TO RULE THREE HUNDRED EIGHTEEN OF THE CIVIL PRACTICE LAW AND RULES OR SECTION THREE HUNDRED FIVE OF THE BUSINESS CORPORATION LAW.

(II) PROOF OF SERVICE MADE PURSUANT TO PARAGRAPH EIGHT OR 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.

(10) For the purposes of this subdivision, no act or practice shall be deemed a deceptive trade practice unless it has been declared a deceptive trade practice and described with reasonable particularity in a local law or in a rule or regulation promulgated by the commissioner.

[(4)] (11) Notwithstanding any other inconsistent provision of law, powers conferred upon the department by this subdivision may be exercised by the office of administrative trials and hearings consistent

with orders of the mayor issued in accordance with subdivisions two and three of section one thousand forty-eight of this charter.

S 3. This act shall take effect immediately, and shall only apply to orders issued on or after the such date.