

1031

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. GANTT -- read once and referred to the Committee  
on Transportation

AN ACT to amend the vehicle and traffic law, in relation to establishing  
an independent traffic violations bureau

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

1     Section 1. Title II of the vehicle and traffic law is amended by  
2     adding a new article 3-B to read as follows:

3                                     ARTICLE 3-B

4                                     TRAFFIC VIOLATIONS BUREAU

5     SECTION 280. STATEMENT OF PURPOSE.

6             281. DEFINITIONS.

7             282. TRAFFIC VIOLATIONS BUREAU; ORGANIZATION.

8             283. FUNCTIONS, POWERS AND DUTIES.

9             284. ADMINISTRATIVE ADJUDICATION OF TRAFFIC VIOLATIONS.

10     S 280. STATEMENT OF PURPOSE. THIS ARTICLE IS ENACTED TO ESTABLISH A  
11     TRAFFIC VIOLATIONS BUREAU INDEPENDENT FROM THE DEPARTMENT OF MOTOR VEHI-  
12     CLES WHICH SHALL BE RESPONSIBLE FOR PROVIDING THE PUBLIC WITH A JUST  
13     SYSTEM OF ADJUDICATING SERIOUS TRAFFIC VIOLATIONS AND OTHER ADMINISTRA-  
14     TIVE PROCEEDINGS ARISING UNDER THE PROVISIONS OF THIS CHAPTER AND TO  
15     ENSURE THAT THE ELEMENTS OF DUE PROCESS ARE PRESENT WITH REGARD TO SUCH  
16     ADJUDICATIONS.

17     S 281. DEFINITIONS. AS USED IN THIS ARTICLE:

18     1. "OFFICE" SHALL MEAN THE TRAFFIC VIOLATIONS BUREAU AS CREATED IN  
19     SECTION TWO HUNDRED EIGHTY-TWO OF THIS ARTICLE.

20     2. "DIRECTOR" SHALL MEAN THE DIRECTOR OF THE TRAFFIC VIOLATIONS BUREAU.

21     3. "ADJUDICATORY PROCEEDING" MEANS HEARINGS PURSUANT TO ARTICLE TWO-A  
22     OF THIS TITLE.

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

LBD03766-01-3

1 4. "HEARING OFFICER" MEANS A PERSON APPOINTED BY THE DIRECTOR TO  
2 CONDUCT AND PRESIDE OVER CONTESTED ADJUDICATORY PROCEEDINGS IN ACCORD-  
3 ANCE WITH THIS ARTICLE.

4 S 282. TRAFFIC VIOLATIONS BUREAU; ORGANIZATION. 1. THERE SHALL BE A  
5 SEPARATE AND INDEPENDENT TRAFFIC VIOLATIONS BUREAU TO IMPLEMENT THE  
6 PROVISIONS OF ARTICLE TWO-A OF THIS TITLE AND TO BE OPERATED AND ADMIN-  
7 ISTERED AS PROVIDED IN THIS ARTICLE CONSISTENT THEREWITH. THE POWERS,  
8 FUNCTIONS, DUTIES AND OBLIGATIONS OF THE OFFICE SHALL BE SEPARATE FROM  
9 AND INDEPENDENT OF THE AUTHORITY OF THE COMMISSIONER OF MOTOR VEHICLES.

10 2. THE HEAD OF THE OFFICE SHALL BE THE DIRECTOR OF THE TRAFFIC  
11 VIOLATIONS BUREAU WHO SHALL BE APPOINTED BY THE GOVERNOR, BY AND WITH  
12 THE ADVICE AND CONSENT OF THE SENATE, AND SHALL HOLD OFFICE UNTIL THE  
13 END OF THE TERM OF THE APPOINTING GOVERNOR AND UNTIL A QUALIFIED SUCCE-  
14 SOR IS APPOINTED. THE DIRECTOR SHALL RECEIVE AN ANNUAL SALARY WITHIN  
15 THE AMOUNT APPROPRIATED THEREFOR. NO PERSON SHALL BE APPOINTED DIRECTOR  
16 UNLESS AT THE TIME OF HIS OR HER APPOINTMENT HE OR SHE IS KNOWLEDGEABLE  
17 ON THE SUBJECT OF ADMINISTRATIVE ADJUDICATION AND HAS BEEN ADMITTED TO  
18 PRACTICE AS AN ATTORNEY AT LAW IN THIS STATE FOR AT LEAST TEN YEARS. THE  
19 DIRECTOR SHALL HAVE THE IMMEDIATE CHARGE OF THE OFFICE. THE DIRECTOR MAY  
20 APPOINT, AND AT PLEASURE REMOVE, SUCH DEPUTY DIRECTORS, ADMINISTRATIVE  
21 LAW JUDGES, OTHER ASSISTANTS AND EMPLOYEES OF THE OFFICE AS ARE DEEMED  
22 NECESSARY. THE DIRECTOR AND ALL OTHER OFFICERS AND EMPLOYEES OF THE  
23 OFFICE SHALL BE PAID AND ALLOWED THEIR NECESSARY, ACTUAL AND REASONABLE  
24 EXPENSES INCURRED IN THE EXERCISE OF THEIR DUTIES. ALL SALARIES AND  
25 EXPENSES OF THE OFFICE SHALL BE PAID OUT OF THE STATE TREASURY ON THE  
26 AUDIT AND WARRANT OF THE COMPTROLLER ON THE CERTIFICATE OF THE OFFICE.  
27 THE PRINCIPAL OFFICE SHALL BE IN THE CITY OF ALBANY AND THERE SHALL BE  
28 ONE OR MORE OFFICES IN EACH JURISDICTION AS NECESSARY TO CARRY OUT THE  
29 PROVISIONS OF ARTICLE TWO-A OF THIS TITLE AND OTHER ADMINISTRATIVE ADJU-  
30 DICATION RESPONSIBILITIES UNDER THIS CHAPTER.

31 S 283. FUNCTIONS, POWERS AND DUTIES. THE DIRECTOR SHALL HAVE THE  
32 FOLLOWING FUNCTIONS, POWERS AND DUTIES:

33 1. TO ESTABLISH, CONSOLIDATE, ALTER OR ABOLISH ANY DEPARTMENTS IN THE  
34 BUREAU AND TO APPOINT THE HEAD OF SUCH DEPARTMENTS AND FIX THEIR DUTIES;

35 2. SUBJECT TO THE CIVIL SERVICE LAW AND THE APPLICABLE COLLECTIVE  
36 BARGAINING AGREEMENTS, TO APPOINT, REMOVE OR TRANSFER DEPUTIES, OFFI-  
37 CERS, ASSISTANTS, HEARING OFFICERS, COUNSELS AND OTHER EMPLOYEES AS MAY  
38 BE NECESSARY FOR THE EXERCISE OF POWERS AND PERFORMANCE OF THE DUTIES OF  
39 THE BUREAU AND TO PRESCRIBE THEIR DUTIES, AND FIX THEIR COMPENSATION  
40 WITHIN THE AMOUNTS APPROPRIATED THEREFOR;

41 3. WHEN REGULARLY APPOINTED HEARING OFFICERS ARE NOT AVAILABLE, THE  
42 DIRECTOR, PURSUANT TO THE APPLICABLE COLLECTIVE BARGAINING AGREEMENTS,  
43 MAY CONTRACT WITH QUALIFIED INDIVIDUALS TO SERVE AS HEARING OFFICERS  
44 PROVIDED THAT TEMPORARY HEARING OFFICERS SHALL HAVE THE SAME QUALIFICA-  
45 TIONS FOR APPOINTMENT AS PERMANENT HEARING OFFICERS;

46 4. TO DEVELOP AND IMPLEMENT A PROGRAM OF EVALUATION TO AID THE DIREC-  
47 TOR IN THE PERFORMANCE OF HIS OR HER DUTIES. THE DIRECTOR SHALL DEVELOP  
48 STANDARDS AND PROCEDURES WHICH SHALL INCLUDE TAKING COMMENTS FROM  
49 SELECTED LITIGANTS AND REPRESENTATIVES BEFORE A HEARING OFFICER;  
50 PROVIDED HOWEVER THAT THE DIRECTOR'S AUTHORITY PURSUANT TO THIS SUBDIVI-  
51 SION IS SUBJECT TO THE PROVISIONS OF THE CIVIL SERVICE LAW AND APPLICA-  
52 BLE COLLECTIVE BARGAINING AGREEMENTS;

53 5. TO THE EXTENT PERMITTED BY LAW, TO PUBLISH AND MAKE AVAILABLE TO  
54 THE PUBLIC ALL RECOMMENDED DECISIONS RENDERED BY A HEARING OFFICER;

6. TO ADOPT, PROMULGATE, AMEND AND RESCIND RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS ARTICLE. SUCH REGULATIONS SHALL SUPERSEDE ANY INCONSISTENT DEPARTMENT RULES; AND

7. TO SUBMIT TO THE GOVERNOR, THE TEMPORARY PRESIDENT AND MINORITY LEADER OF THE SENATE AND THE SPEAKER AND MINORITY LEADER OF THE ASSEMBLY AN EVALUATION OF THE EFFECTIVENESS OF THE BUREAU IN ATTAINING THE OBJECTIVES OF THIS ARTICLE PREPARED BY AN INDEPENDENT ENTITY. SUCH EVALUATION SHALL BE SUBMITTED BY NOVEMBER THIRTIETH OF THE SECOND YEAR FOLLOWING THE EFFECTIVE DATE OF THIS SECTION AND BY SEPTEMBER FIRST EVERY TWO YEARS THEREAFTER.

S 284. ADMINISTRATIVE ADJUDICATION OF TRAFFIC VIOLATIONS. THE BUREAU SHALL BE VESTED WITH EXCLUSIVE JURISDICTION OVER ALL CASES THAT MAY BE HEARD AND DETERMINED PURSUANT TO THE PROVISIONS OF SECTION TWO HUNDRED TWENTY-FIVE OF THIS TITLE.

S 2. Section 225 of the vehicle and traffic law, as amended by chapter 682 of the laws of 1970, subdivision 1 as amended by chapter 173 of the laws of 1990 and subdivision 2 as amended by chapter 196 of the laws of 1972, is amended to read as follows:

S 225. Jurisdiction; transfer of cases; hearing officers; regulations. 1. Notwithstanding any inconsistent provision of law, all violations of this chapter or of a law, ordinance, order, rule or regulation relating to traffic, except parking, standing, stopping or pedestrian offenses, which occur within a city having a population of two hundred thousand or more in which administrative tribunals have heretofore been established, or within that portion of Suffolk county for which a district court has been established, and which are classified as traffic infractions, may be heard and determined pursuant to the regulations of the [commissioner] DIRECTOR OF THE TRAFFIC VIOLATIONS BUREAU as provided in [this] article THREE-B OF THIS TITLE. Whenever a crime and a traffic infraction arise out of the same transaction or occurrence, a charge alleging both offenses may be made returnable before the court having jurisdiction over the crime. Nothing herein provided shall be construed to prevent a court, having jurisdiction over a criminal charge relating to traffic or a traffic infraction, from lawfully entering a judgment of conviction, whether or not based on a plea of guilty, for any offense classified as a traffic infraction.

2. Whenever [the commissioner or his deputy] THE DIRECTOR OF THE TRAFFIC VIOLATIONS BUREAU determines that a charge alleges an offense other than a traffic infraction, he OR SHE shall, and where a charge cannot be disposed of because of the non-appearance of the motorist, he OR SHE may notify the court of appropriate jurisdiction and request removal of the case to such court. Prior notice of such request need not be given the motorist involved. Upon receipt of such request, the court may grant an order transferring such case, provided that the date on which the charge or charges must be answered before the court shall not be earlier than the return date which appears on the complaint alleging the offense. Notice of transfer of cases involving other than traffic infractions shall be mailed to the motorist at the address appearing on such complaint not less than ten days before the date of appearance indicated on his OR HER summons and not less than fifteen days before his OR HER scheduled appearance in such court. Notice of transfer of cases which cannot be disposed of because of the non-appearance of the motorist shall be mailed to the motorist at the address appearing on such complaint not less than fifteen days before his OR HER scheduled appearance in such court. Such mailing shall constitute due notice of such

1 transfer. Thereafter, such case shall be treated in the same manner as  
2 if the complaint had initially been filed with such court.

3 3. The commissioner [shall appoint such hearing officers as shall be  
4 necessary to hear and determine cases as provided by this article and]  
5 may promulgate [such] regulations [as shall be necessary or desirable to  
6 effect the purposes of this article. Such regulations may] TO provide  
7 for a schedule of monetary penalties to be used where an answer is made,  
8 other than before a hearing officer, admitting a charge, provided that  
9 no such penalty shall exceed the maximum fine established by law for the  
10 traffic infraction involved.

11 S 3. Subdivision 1 of section 225 of the vehicle and traffic law, as  
12 amended by chapter 388 of the laws of 2012, is amended to read as  
13 follows:

14 1. Notwithstanding any inconsistent provision of law, all violations  
15 of this chapter or of a law, ordinance, order, rule or regulation relat-  
16 ing to traffic, except parking, standing, stopping or pedestrian  
17 offenses, which occur within a city having a population of two hundred  
18 thousand or more in which administrative tribunals have heretofore been  
19 established, and which are classified as traffic infractions, may be  
20 heard and determined pursuant to the regulations of the [commissioner]  
21 DIRECTOR OF THE TRAFFIC VIOLATIONS BUREAU as provided in [this] article  
22 THREE-B OF THIS TITLE. Whenever a crime and a traffic infraction arise  
23 out of the same transaction or occurrence, a charge alleging both  
24 offenses may be made returnable before the court having jurisdiction  
25 over the crime. Nothing herein provided shall be construed to prevent a  
26 court, having jurisdiction over a criminal charge relating to traffic or  
27 a traffic infraction, from lawfully entering a judgment of conviction,  
28 whether or not based on a plea of guilty, for any offense classified as  
29 a traffic infraction.

30 S 4. Codification of changes. Within nine months of the effective date  
31 of this section, the commissioner of motor vehicles shall prepare and  
32 submit to the governor, the temporary president and minority leader of  
33 the senate, and the speaker and minority leader of the assembly a  
34 proposed codification of changes in law necessary and appropriate to  
35 carry out the purposes and provisions of article 3-B of the vehicle and  
36 traffic law as added by section one of this act. Such changes shall  
37 include provisions for transition of personnel and cases to the traffic  
38 violations bureau.

39 S 5. This act shall take effect on the first of January next succeed-  
40 ing the date on which it shall have become a law; provided however that,  
41 if section 8 of chapter 388 of the laws of 2012 is not in effect as of  
42 such date then the amendments to subdivision 1 of section 225 of the  
43 vehicle and traffic law by section three of this act shall take effect  
44 on the same date and same manner as such chapter 388 of the laws of 2012  
45 takes effect, as amended; provided further that section four of this act  
46 shall take effect immediately.