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

5746

2013-2014 Regular Sessions

I N S E N A T E

June 11, 2013

Introduced by Sen. ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to establishing the towing and storage bill of rights act; and to repeal section 399-x of such law relating thereto

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

Section 1. The general business law is amended by adding a new article 39-H to read as follows:

ARTICLE 39-H

TOWING AND STORAGE BILL OF RIGHTS ACT

SECTION 899-JJJ. SHORT TITLE.
899-KKK. DEFINITIONS.
899-LLL. REQUIRED NOTICE AND AUTHORITY TO TOW.
899-MMM. ITEMIZED STATEMENTS AND RELEASE OF VEHICLE.
899-NNN. PROHIBITED ACTS.
899-OOO. RECORDS.
899-PPP. PENALTIES.
899-QQQ. EXCLUSIONS.

S 899-JJJ. SHORT TITLE. THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE "TOWING AND STORAGE BILL OF RIGHTS ACT."

S 899-KKK. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "AUTOMOBILE CLUB" MEANS A LEGAL ENTITY WHICH, IN CONSIDERATION OF DUES, ASSESSMENTS OR PERIODIC PAYMENTS OF MONEY, PROMISES ITS MEMBERS OR SUBSCRIBERS TO ASSIST THEM IN MATTERS RELATING TO MOTOR TRAVEL OR THE OPERATION, USE OR MAINTENANCE OF A MOTOR VEHICLE, INCLUDING AUTO DEALERS AND INSURANCE COMPANIES, BY SUPPLYING SERVICES, WHICH MAY INCLUDE BUT ARE NOT LIMITED TO TOWING SERVICE, EMERGENCY ROAD SERVICE AND INDEMNIFICATION SERVICE.

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

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2. "OWNER" MEANS THE PERSON OR ENTITY TO WHOM A VEHICLE IS REGISTERED, OR TO WHOM IT IS LEASED, IF THE TERMS OF THE LEASE REQUIRE THE LESSEE TO MAINTAIN AND REPAIR THE VEHICLE. THE HOLDER OF A CONTRACT WITH A VEHICLE RENTAL AGENCY SHALL NOT BE CONSIDERED THE OWNER OF THAT VEHICLE.

3. "TOWING BUSINESS, TOWING SERVICE OR TOWING COMPANY" MEANS ANY BUSINESS ENTITY OR OPERATION THAT EXISTS TO TOW OR OTHERWISE MOVE MOTOR VEHICLES BY MEANS OF A TOW TRUCK, OR THE OWNERSHIP OR OPERATION OF A TOWING SERVICE STORAGE LOT. A TOWING BUSINESS, SERVICE OR COMPANY SHALL NOT INCLUDE AN AUTOMOBILE CLUB, CAR DEALERSHIP OR INSURANCE COMPANY.

4. "TOW TRUCK OPERATOR" MEANS A PERSON WHO OPERATES A MOTOR VEHICLE THAT IS EQUIPPED TO PROVIDE ANY FORM OF TOWING SERVICES.

5. "CONSENSUAL TOWING" MEANS TOWING A MOTOR VEHICLE WHEN THE OWNER OR OPERATOR OF THE MOTOR VEHICLE HAS GIVEN WRITTEN PERMISSION TO TOW THE VEHICLE.

6. "NON-CONSENSUAL TOWING" MEANS THE TOWING OF A MOTOR VEHICLE WITHOUT WRITTEN PERMISSION OF THE OWNER OR WHEN A LAW ENFORCEMENT OFFICER ORDERS THE VEHICLE TO BE TOWED, REGARDLESS OF WHETHER OR NOT THE OWNER CONSENTS.

S 899-LLL. REQUIRED NOTICE AND AUTHORITY TO TOW. 1. THE TOWING BUSINESS, SERVICE OR COMPANY MUST PROPERLY SECURE ALL TOWED VEHICLES AND MAKE ALL REASONABLE EFFORTS TO PREVENT FURTHER DAMAGE TO OR THEFT OF ALL TOWED VEHICLES.

2. WITHIN TWENTY-FOUR HOURS OF COMMENCEMENT OF TOWING, NOTICE SHALL BE GIVEN DIRECTLY TO THE OWNER BY REGISTERED MAIL FROM THE TOWING COMPANY. IF THE VEHICLE IS TOWED ON A HOLIDAY OR A DAY WITH NO MAIL SERVICE THE TWENTY-FOUR HOUR PERIOD WILL COMMENCE ON THE NEXT DAY WITH MAIL SERVICE. NO STORAGE CHARGES BEYOND THE INITIAL TWENTY-FOUR HOUR CHARGE WILL ACCRUE UNTIL THE NOTICE REQUIREMENT HAS BEEN MET.

3. NOTICE TO THE OWNER OR INSURER SHALL CONTAIN THE FOLLOWING INFORMATION:

(A) THE DATE AND TIME THE VEHICLE WAS TOWED;

(B) THE LOCATION FROM WHICH THE VEHICLE WAS TOWED;

(C) THE LOCATION AND ADDRESS WHERE THE VEHICLE WILL BE LOCATED, INCLUDING ONE-WAY MILEAGE OF THE TOTAL DISTANCE OF THE TOW;

(D) THE LOCATION, ADDRESS AND PHONE NUMBER WHERE PAYMENT AND BUSINESS TRANSACTIONS TAKE PLACE IF DIFFERENT FROM BUSINESS ADDRESS;

(E) THE NAME, ADDRESS AND PHONE NUMBER OF THE TOW TRUCK COMPANY;

(F) THE NAME AND SIGNATURE OF THE TOW TRUCK OPERATOR;

(G) A DESCRIPTION OF THE TOWED VEHICLE INCLUDING BUT NOT LIMITED TO THE MAKE, MODEL, YEAR AND COLOR OF THE TOWED VEHICLE;

(H) THE LICENSE PLATE NUMBER AND STATE OF REGISTRATION OF THE TOWED VEHICLE; AND

(I) AN ITEMIZATION OF ALL PENDING CHARGES, STORAGE RATES AND FEES.

S 899-MMM. ITEMIZED STATEMENTS AND RELEASE OF VEHICLES. 1. RELEASE OF THE VEHICLE MUST OCCUR TO THE OWNER OR THE OWNER'S INSURANCE COMPANY REPRESENTATIVE UPON PAYMENT OF THE APPLICABLE TOWING AND/OR STORAGE CHARGES.

2. ACCEPTABLE METHODS OF PAYMENT FOR TOWING, STORAGE AND ANY ADDITIONAL SERVICES MUST INCLUDE, BUT ARE NOT LIMITED TO, CASH, INSURANCE CHECK, CERTIFIED CHECK, MONEY ORDER AND CREDIT CARDS AND DEBIT CARDS WHICH THE TOWING BUSINESS ACCEPTS AS FORMS OF PAYMENT IN THE REGULAR COURSE OF BUSINESS AS THOSE TERMS ARE DEFINED IN SECTION FIVE HUNDRED ELEVEN OF THIS CHAPTER.

3. AN ITEMIZED STATEMENT FOR TOWING COSTS SHALL BE PROVIDED BY THE TOWING BUSINESS TO THE OWNER OF THE VEHICLE OR THE OWNER'S INSURANCE

COMPANY. EACH ITEMIZED STATEMENT FOR TOWING COSTS SHALL CONTAIN THE FOLLOWING INFORMATION:

(A) THE LOCATION FROM WHICH THE VEHICLE WAS TOWED;

(B) THE STORAGE LOCATION OF THE VEHICLE;

(C) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE TOW TRUCK COMPANY;

(D) THE NAME OF THE TOW TRUCK OPERATOR;

(E) A DESCRIPTION OF THE VEHICLE INCLUDING BUT NOT LIMITED TO THE MAKE, MODEL, YEAR AND COLOR OF THE TOWED VEHICLE;

(F) THE LICENSE PLATE NUMBER AND STATE OF REGISTRATION OF THE TOWED VEHICLE;

(G) THE COST OF THE ORIGINAL TOW;

(H) THE DAILY STORAGE CHARGE AND THE NUMBER OF DAYS THE VEHICLE WAS STORED; AND

(I) EACH ADDITIONAL SERVICE MUST BE SET FORTH INDIVIDUALLY AS A SINGLE LINE ITEM WITH AN EXPLANATION AND THE EXACT CHARGE FOR THE SERVICE.

4. A COPY OF EACH STATEMENT AND RECEIPT SUBMITTED BY A TOW TRUCK OPERATOR IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION SHALL BE RETAINED BY THE TOWING BUSINESS FOR THREE YEARS FROM THE DATE OF ISSUANCE.

5. THE OWNER OR THE OWNER'S INSURANCE COMPANY REPRESENTATIVE SHALL HAVE THE RIGHT TO INSPECT THE VEHICLE BEFORE ACCEPTING ITS RETURN.

S 899-NNN. PROHIBITED ACTS. 1. IT SHALL BE UNLAWFUL FOR ANY PERSON OR ENTITY CONDUCTING A TOWING BUSINESS OR FOR ANY PERSON ACTING ON HIS/HER BEHALF:

(A) TO FALSELY REPRESENT, EITHER EXPRESSLY OR BY IMPLICATION, THAT THE TOWING BUSINESS REPRESENTS OR IS APPROVED BY ANY PRIVATE ORGANIZATION WHICH PROVIDES EMERGENCY ROAD SERVICE FOR DISABLED MOTOR VEHICLES OR OTHERWISE FALSELY REPRESENT THAT IT HAS AN AFFILIATIONS OR AGREEMENT WITH ANY OTHER ENTITY;

(B) TO REQUIRE AN OWNER/OPERATOR OF A MOTOR VEHICLE INVOLVED IN AN ACCIDENT OR BREAKDOWN, TO SIGN AN AGREEMENT PRE-AUTHORIZING STORAGE CHARGES OR REPAIR WORK PREFORMED AS A CONDITION TO PROVIDING TOWING SERVICE FOR THE VEHICLE;

(C) TO CHARGE TOWING, STORAGE OR OTHER FEES WHICH ARE EXCESSIVE OR UNREASONABLE (ANY SUCH FEES SHALL BE PRESUMED TO BE UNREASONABLE TO THE EXTENT THAT THEY EXCEED ANY SCHEDULE OF FEES WHICH HAS BEEN ADOPTED BY A MUNICIPALITY IN WHICH THE TOWING AND/OR STORAGE SERVICES WERE CONDUCTED);

(D) TO CHARGE FEES IN ADDITION TO THE TOWING FEE FOR SERVICES WHICH ARE CUSTOMARILY PERFORMED IN CONJUNCTION WITH TOWING THE VEHICLE;

(E) TO CHARGE STORAGE FEES FOR TIME PERIODS WHEN THE TOWING BUSINESS IS NOT OPEN OR WHEN THE RELEASE OF THE VEHICLE CANNOT BE SECURED BY THE OWNER OR THE OWNER'S INSURANCE COMPANY;

(F) TO CHARGE STORAGE FEES WHICH ARE NOT PRORATED FOR ANY PORTION OF A TWENTY-FOUR HOUR PERIOD IN WHICH THE VEHICLE IS STORED IF A VEHICLE IS STORED FOR LESS THAN A TWENTY-FOUR HOUR PERIOD;

(G) TO CHARGE MORE THAN ONE TOWING FEE WHEN THE OWNER/OPERATOR OF A DISABLED VEHICLE REQUESTS TRANSPORT OF THE VEHICLE TO A REPAIR FACILITY OWNED OR OPERATED BY THE PERSON OR ENTITY CONDUCTING THE TOW;

(H) TO CHARGE ADDITIONAL FEES IF MORE THAN ONE EMPLOYEE OF THE TOWING BUSINESS ASSISTS IN PROVIDING TOWING SERVICES;

(I) TO TOW VEHICLES TO A REPAIR FACILITY UNLESS THE OWNER OR THE OWNER'S DESIGNATED REPRESENTATIVE GIVES WRITTEN CONSENT BEFORE REMOVAL OF THE VEHICLE FROM THE SCENE OF THE ACCIDENT;

(J) TO REFUSE TO RELEASE A VEHICLE TO THE OWNER OR THE OWNER'S INSURER UPON TENDER OF FULL PAYMENT ALONG WITH AN ITEMIZED RECEIPT FOR ALL

LAWFUL CHARGES MADE IN CONNECTION WITH THE TOWING AND STORAGE OF A VEHICLE, UNLESS SUCH RELEASE IS NOT PERMISSIBLE PURSUANT TO ANY APPLICABLE STATE OR LOCAL LAW;

(K) TO REFUSE THE RIGHT OF PHYSICAL INSPECTION OF THE TOWED VEHICLE BY THE OWNER, OR THE OWNER'S INSURER PRIOR TO PAYMENT OF FEES AND RELEASE OF A VEHICLE;

(L) TO OFFER TO GIVE ANY GRATUITIES OR INDUCEMENTS OF ANY KIND TO ANY POLICE OFFICER OR OTHER PERSON IN ORDER TO OBTAIN TOWING BUSINESS OR RECOMMENDATIONS FOR TOWING OR STORAGE OF, OR ESTIMATING REPAIRS TO, DISABLED VEHICLES; OR

(M) TO TOW A VEHICLE IN SUCH A NEGLIGENT MANNER AS TO CAUSE FURTHER DAMAGE TO THE VEHICLE BEING TOWED.

S 899-OOO. RECORDS. EVERY TOWING COMPANY THAT PERFORMS PRIVATE PROPERTY OR OTHER NON-CONSENSUAL TOWING SHALL RETAIN FOR A PERIOD OF THREE YEARS, INVOICES, JOB ORDERS, LOGS, CLAIMS FOR REIMBURSEMENT FROM INSURANCE COMPANIES AND OTHER DOCUMENTATION RELATING TO ALL CONSENSUAL AND NON-CONSENSUAL TOWING SERVICES PERFORMED AND RATES CHARGED FOR THE SERVICES.

S 899-PPP. PENALTIES. 1. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS FOR EACH SUCH VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

2. THE PROVISIONS OF THIS ARTICLE MAY BE ENFORCED CONCURRENTLY BY THE TOWN ATTORNEY, CITY CORPORATION COUNSEL, OR OTHER LAWFUL DESIGNEE OF A MUNICIPALITY OR LOCAL GOVERNMENT AND ALL MONEYS COLLECTED THEREUNDER SHALL BE RETAINED BY SUCH MUNICIPALITY OR LOCAL GOVERNMENT. VIOLATIONS OF THIS ARTICLE SHALL BE SUBJECT TO A FINE IN AN AMOUNT NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS PER VIOLATION.

S 899-QQQ. EXCLUSIONS. 1. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE APPLICABLE TO THE FOLLOWING:

(A) TOWING OF VEHICLES INTO THIS STATE OR THROUGH THIS STATE IF THE TWO ORIGINATES OUTSIDE OF THIS STATE;

(B) TOWING OF GOVERNMENT-OWNED OR GOVERNMENT CONTROLLED VEHICLES BY THE GOVERNMENT AGENCY THAT OWNS OR CONTROLS THEM;

(C) TOWING OF MOTOR VEHICLES BY OR ON BEHALF OF AN AUTOMOBILE CLUB, CAR DEALERSHIP OR INSURANCE COMPANY; OR

(D) TOWING OF MOTOR VEHICLES IN CONNECTION WITH A REPOSSESSION OF A MOTOR VEHICLE SUBJECT TO SUBDIVISION ONE OF SECTION FOUR HUNDRED TWENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW.

2. THE PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO THE EXTENT THAT THEY CONFLICT WITH ANY LOCAL LAW OR ORDINANCE AND THE PROVISIONS OF THE LOCAL LAW OR ORDINANCE ARE MORE STRINGENT THAN THE PROVISIONS OF THIS ARTICLE.

S 2. Subdivision 2 of section 399-xx of the general business law, as added by chapter 690 of the laws of 2004, is amended to read as follows:

2. Requirements. A commercial tower who responds to a call for assistance from an owner or operator of a vehicle that is inoperable or cannot be safely operated or who offers to transport, repair, or render safely operable such a vehicle shall, in compliance with any reasonable request of an owner or operator of such vehicle, repair the vehicle or transport the vehicle and its occupants to a reasonably safe location where repairs can be made. The commercial tower shall not be required to transport all vehicle occupants if the number of occupants exceeds the number of passengers that can be safely transported. The owner or operator of the vehicle shall be liable to the commercial tower for the cost of towing and repair services provided. The commercial tower shall accept cash, INSURANCE CHECK, CERTIFIED CHECK, MONEY ORDER and all other forms of payment that such commercial tower accepts in the ordinary course of business, including credit and debit cards as those terms are defined in section five hundred eleven of this chapter as payment for all or part of the charges for towing and repair services accepted and provided. The commercial tower may require such proof of identification from persons making payments in forms other than cash as the commercial tower requires for such payments in the ordinary course of business. If the owner or operator of a vehicle declines services of the commercial tower or cannot or will not provide payment and identification for towing or repair services, a commercial tower shall notify law enforcement about the location and identification of the vehicle and its occupants. The provisions of this section do not apply to a vehicle which is lawfully parked at the home of the vehicle's owner or operator.

S 3. Section 399-x of the general business law is REPEALED.

S 4. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 5. This act shall take effect on the ninetieth day after it shall have become a law.