STATE OF NEW YORK

5998--A

2017-2018 Regular Sessions

IN ASSEMBLY

February 21, 2017

Introduced by M. of A. KIM, GOTTFRIED, DINOWITZ, BICHOTTE, WEPRIN, MONTESANO, MOSLEY, ORTIZ, CYMBROWITZ, HARRIS, NIOU, TITONE, CRESPO, D'URSO, RIVERA, LAWRENCE, SEPULVEDA, RICHARDSON -- Multi-Sponsored by -- M. of A. DE LA ROSA, HIKIND, HYNDMAN, NOLAN -- read once and referred to the Committee on Cities -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the administrative code of the city of New York, in relation to enacting the towing protection enforcement act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "towing protection enforcement act".

§ 2. Subdivision j of section 19-169.1 of the administrative code of the city of New York, as amended by local law number 41 of the city of New York for the year 2011, is amended to read as follows:

j. **(1)** Any person who violates this section shall be punished as follows: for the first violation, a fine of five hundred dollars; for the second violation within a period of twelve months of the date of the first violation, a fine of one thousand dollars; and for any additional violations within a period of twenty-four months of the date of a first violation, a fine of [~~one~~] **two** thousand dollars.

(2) In addition to the penalties prescribed by paragraph one of this subdivision, any person who knowingly or willfully violates the provisions of this section or subdivision b of section 20-515 of this code or any rules promulgated thereunder shall be guilty of a misdemeanor punishable by a fine of not less than five hundred dollars or more than three thousand dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment.

(3) Any person who knowingly or willfully violates the provisions of this section or subdivision b of section 20-515 of this code or any

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

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rules promulgated thereunder who has been found guilty of a violation of any such provisions or such rules two times within a twenty-four month period shall be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars or more than ten thousand dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

§ 3. Subdivisions a and b of section 20-499 of the administrative code of the city of New York, subdivision a as amended and subdivision b as added by local law number 11 of the city of New York for the year 1989, are amended to read as follows:

a. As a condition of the issuance of a license to engage in towing, each applicant shall furnish to the commissioner a surety bond in the sum of [~~five~~] twenty-five thousand dollars, payable to the city of New York, executed by the applicant and a surety approved by the commissioner. Such bond shall be conditioned upon the applicant's compliance with the provisions of this subchapter and any rules or regulations promulgated hereunder, and upon the further condition that the applicant will pay to the city any fine, penalty or other obligation within thirty days of its imposition, or any final judgment recovered by any person who received towing services from a licensee thereunder and was damaged thereby. The commissioner may in his or her discretion, after a public hearing, five days notice of which shall be published in the City Record, increase the amount of the surety bond required by this section to an amount not to exceed [~~twenty-five~~] two hundred fifty thousand dollars. The commissioner may by regulation authorize an applicant to, in lieu of a bond, deposit cash to satisfy the requirements of this section in an amount equal to the sum of the surety bond required by this section.

b. (1) The commissioner may by regulation establish a fund to be administered by the comptroller and authorize an applicant for a license to engage in towing to, in lieu of a bond or cash equivalent, make contributions to such fund to satisfy the requirements of subdivision a of this section. The commissioner may promulgate such rules or regulations as are necessary for the administration of such fund including, but not limited to, regulations setting forth the conditions for participation in the fund, the contributions required to be made to the fund, including the criteria and methodology for determining the appropriate amount of the contributions, and the circumstances under which disbursements will be made from the fund.

(2) Notwithstanding any provisions of titles nineteen and twenty of this code to the contrary, any licensee who prior to the effective date of this paragraph was authorized by the commissioner to make a contribution to the fund established pursuant to paragraph one of this subdivision and who has been found guilty of a violation of sections 19-169.1 and 20-515 of this code two times within a twelve month period shall be required to furnish a surety bond in an amount determined by the commissioner.

§ 4. Subdivisions e and f of section 20-504 of the administrative code of the city of New York, subdivision e as amended by local law number 66 of the city of New York for the year 1989 and subdivision f as added by local law number 28 of the city of New York for the year 1987, are amended and a new subdivision g is added to read as follows:

e. the person holding a tow truck operator's license, or the person holding a license to engage in towing or where applicable any of its officers, principals, directors or stockholders owning more than ten percent of the outstanding stock of the corporation has been convicted

of a crime which, in the judgment of the commissioner, has a direct relationship to such person's fitness or ability to perform any of the activities for which a license is required under this subchapter; or has been convicted of any other crime which, in accordance with article twenty-three-a of the correction law, would provide a justification for the commissioner to refuse to renew, or to suspend or revoke, such license; [~~or~~]

f. the person holding a tow truck operator's license, or the person holding a license to engage in towing has failed to maintain any of the conditions for issuance of such license as provided under this subchapter or any rule or regulation promulgated hereunder[~~.~~]**; or**

g. the person holding a tow truck operator's license, or the person holding a license to engage in towing is the subject of at least five separate complaints within a one year period to the commissioner or the police department for failure to comply with the provisions of section 19-169.1 or subdivision b of section 20-515 of this code.

§ 5. Section 20-504.1 of the administrative code of the city of New York, as amended by local law number 41 of the city of New York for the year 2011, is amended to read as follows:

§ 20-504.1 Mandatory suspension or revocation of license. **a.** After due notice and opportunity to be heard, the commissioner shall refuse to renew, or shall suspend or revoke a license required under this subchapter, upon the occurrence of any one or more of the following conditions:

[~~a.~~] **1.** the person holding a license to engage in towing or where applicable, any of such licensee's officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation, has been found by the commissioner to have unjustifiably refused to release a vehicle towed pursuant to section 20-518 or section 20-519 of this subchapter, to the vehicle's owner or the owner's agent. The commissioner shall establish standards concerning the sufficiency of proof of ownership of the vehicle and the legality of any charges demanded by the licensee for release of the vehicle. In determining whether such refusal is unjustifiable, the commissioner in addition to any other relevant fact shall consider such standards;

[~~b.~~] **2.** in a two year period, the person holding a license to engage in towing or where applicable, any of such licensee's officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation, has been found by the commissioner to have committed in any combination three or more violations of sections 19-169, [~~19-169.1 of this code or any rules promulgated thereunder, or sections~~] 20-507, 20-509, 20-509.1, 20-510, 20-512, 20-514, 20-515, 20-516, 20-518, 20-519, 20-520, 20-520.1 or 20-527 of this [~~subchapter~~] **code** or any rules promulgated thereunder;

[~~c.~~] **3.** the person holding a license to engage in towing or where applicable, any of such licensee's officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation, has been convicted of a misdemeanor or a felony relating to auto stripping in violation of article [~~165~~] **one hundred sixty-five** of the penal law;

[~~d.~~] **4.** in a two year period, the person holding a tow truck operator's license has been found by the commissioner to have committed in any combination three or more violations of the provisions of sections 19-169 [~~and 19.169.1 of this code and any rules promulgated thereunder, or sections~~]**,** 20-510, 20-512, 20-514, 20-515, 20-518, 20-519, 20-520, 20-520.1 or 20-527 of this [~~subchapter~~] **code** or any rules promulgated thereunder;

[~~c.~~] 5. the person holding a tow truck operator's license has been found to have operated any motor vehicle in violation of section eleven hundred ninety-two of the vehicle and traffic law during the license term, or has been found to have operated a tow truck in violation of section eleven hundred eighty-two of the vehicle and traffic law.

b. Notwithstanding the provisions of paragraph two of subdivision a of this section, the commissioner, after due notice and opportunity to be heard, shall refuse to renew, or shall suspend or revoke a license required under this subchapter upon a finding that, in a one year period, the person holding a license to engage in towing or where applicable, any of such licensee's officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation, committed any combination of two or more violations of section 19-169.1 or subdivision b of section 20-515 of this code.

§ 6. The opening paragraph of section 20-510 of the administrative code of the city of New York is designated subdivision a and a new subdivision b is added to read as follows:

b. A tow truck operator is forbidden from using spotters or spotting techniques, such as waiting and targeting drivers at parking lots, to tow vehicles on private or commercial property and must obtain the written consent of the owner or manager of the private or commercial property to conduct towing pursuant to section 19-169.1 of this code.

§ 7. Subdivision b of section 20-515 of the administrative code of the city of New York, as amended by local law number 94 of the city of New York for the year 1997, is amended to read as follows:

b. soliciting or offering any inducements or making representations: (i) at the scene of a vehicular accident for the towing of any vehicle involved in an accident, (ii) at or near the scene of the removal of a vehicle pursuant to section 19-169.1 of this code, or (iii) for the performance of any repairs on any vehicle involved in an accident except as may be reasonable and necessary at the scene of an accident for the towing of an accident vehicle on a segment of the arterial highways by an arterial tow permittee who has been authorized by the commissioner of transportation or the police commissioner to provide tow service on such segment.

§ 8. Within one hundred eighty days after the effective date of this act, the tow advisory board, established pursuant to section 20-526 of the administrative code of the city of New York, shall conduct at least one public hearing in each borough of the city of New York to solicit and receive public comments on towing issues. Upon completion of the hearings, the tow advisory board, in consultation with the interagency advisory council, shall make recommendations to address this growing problem including how to improve enforcement of section 19-169.1 of such administrative code and the laws or rules prohibiting the soliciting or making representations at or near the scene of the towing or removal of a vehicle by a tow truck operator.

§ 9. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 10. This act shall take effect immediately.