STATE OF NEW YORK

1326

2017-2018 Regular Sessions

IN SENATE

January 9, 2017

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to providing for forfeiture of a truck, tractor and/or tractor-trailer combination if a driver thereof has been convicted of three violations of a designated system of truck routes within eighteen months

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

Section 1. Section 1800 of the vehicle and traffic law is amended by adding a new subdivision (i) to read as follows:

(i) 1. Any truck, tractor or tractor-trailer combination having a total gross weight in excess of ten thousand pounds, which has been or is being used in violation of a local law, ordinance, order, rule or regulation enacted by the legislative body of any city, village or town, pursuant to the provisions of paragraph ten of subdivision (a) of section sixteen hundred forty or paragraph ten of subdivision (a) of section sixteen hundred sixty of this chapter, may, upon a third conviction for such an offense of the owner or operator of such vehicle in an eighteen month period, be seized by any peace officer, acting pursuant to his or her special duties, or police officer, and forfeited as hereinafter provided in this subdivision.

2. A truck, tractor or tractor-trailer combination having a total gross weight in excess of ten thousand pounds may be seized upon service of a notice of violation upon the owner or operator of such vehicle. The seized vehicle shall be delivered by the officer having made the seizure to the custody of the district attorney, corporation counsel or other prosecuting authority which is assigned to handle the prosecution of the offense in the relevant municipality, together with a report of all the facts and circumstances of the seizure. Within one business day after the seizure, notice of such violation and a copy of the notice of violation shall be mailed to the owner of such vehicle at the address

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

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for such owner set forth in the records maintained by the department of motor vehicles or, for vehicles not registered in New York state, such equivalent record in such state of registration.

3. a. The attorney general in seizures by members of the state police, or the district attorney, corporation counsel or other prosecuting authority which is assigned to handle the prosecution of the offense in the relevant municipality shall inquire into the facts of the seizure so reported to him or her. If it appears that there is a basis for the commencement and prosecution of a forfeiture proceeding pursuant to this subdivision, any such forfeiture proceeding shall be commenced in supreme court not later than twenty days after the date of receipt of a written demand by a person claiming ownership of the truck, tractor or tractor-trailer combination accompanied by the documentation required to be presented upon release of such vehicle pursuant to clauses (i), (ii), and (iv) of subparagraph a of paragraph four of this subdivision.

b. Where forfeiture proceedings are commenced and prosecuted pursuant to this section, the truck, tractor or tractor-trailer combination which is the subject of such proceedings shall remain in the custody of such prosecuting authority, as applicable, pending the final determination of such proceedings.

c. To the extent applicable, the procedures of article thirteen-A of the civil practice law and rules shall govern proceedings and actions under this subdivision.

4. A truck, tractor or tractor-trailer combination seized pursuant to this section shall be released when:

a. (i) Such prosecuting authority has made a determination not to institute forfeiture proceedings pursuant to this subdivision or the time period within which a forfeiture proceeding could have been commenced pursuant to this subdivision has elapsed and no such forfeiture proceeding was commenced or the prosecution for violation of the local law, ordinance, order, rule or regulation enacted by the legislative body of any city, village or town, pursuant to the provisions of paragraph ten of subdivision (a) of section sixteen hundred forty or paragraph ten of subdivision (a) of section sixteen hundred sixty of this chapter has been terminated in favor of the accused; and

(ii) The person seeking to claim the truck, tractor or tractor-trailer combination has furnished satisfactory evidence of registration and financial security and, if the person was the operator of the vehicle at the time of the violation of the local law, ordinance, order, rule or regulation enacted by the legislative body of any city, village or town, pursuant to the provisions of paragraph ten of subdivision (a) of section sixteen hundred forty or paragraph ten of subdivision (a) of section sixteen hundred sixty of this chapter, satisfactory evidence of payment of any fines or penalties imposed in connection therewith; and

(iii) Payment has been made for the reasonable costs of removal and storage of the truck, tractor or tractor-trailer combination. The owner of such vehicle shall be responsible for such payment provided, however, that if he or she was not the operator at the time of the offense, such person shall have a cause of action against such operator to recover such costs. Payment prior to release of such vehicle shall not be required in cases where the seized truck, tractor or tractor-trailer combination was stolen or rented or leased pursuant to a written agreement for a period of thirty days or less, however the operator of such a vehicle shall be liable for the costs of removal and storage of such vehicle to any entity rendering such service; and

(iv) If the truck, tractor or tractor-trailer combination is held as evidence, the person seeking to claim such vehicle has presented a release from the prosecuting authority providing that the motor vehicle is not needed as evidence.

b. (i) Pending completion of forfeiture proceedings which have been commenced, the person seeking to claim the truck, tractor or tractor-trailer combination has posted a bond in a form satisfactory to such prosecuting authority in an amount that shall not exceed an amount sufficient to cover the maximum fines or civil penalties which may be imposed for the violation underlying the seizure and all reasonable costs for removal and storage of such vehicle; and

(ii) The persons seeking to claim the motor vehicle have furnished satisfactory evidence of registration and financial security.

5. Where a demand for the return of a truck, tractor or tractor-trailer combination is not made within ninety days after the termination of the proceeding founded upon the charge of violation of a local law, ordinance, order, rule or regulation enacted by the legislative body of any city, village or town, pursuant to the provisions of paragraph ten of subdivision (a) of section sixteen hundred forty or paragraph ten of subdivision (a) of section sixteen hundred sixty of this chapter, such motor vehicle shall be deemed to be abandoned. Such vehicle shall be disposed of by the relevant municipality, as applicable, in accordance with section twelve hundred twenty-four of this chapter or as otherwise provided by law.

6. Notice of the institution of the forfeiture proceeding shall be served:

a. By personal service pursuant to the civil practice law and rules upon all owners of the seized truck, tractor or tractor-trailer combination listed in the records maintained by the department, or for vehicles not registered in New York state, in the records maintained by the state of registration; and

b. By first class mail upon all individuals who have notified such prosecuting authority that they are an owner of the truck, tractor or tractor-trailer combination and upon all persons holding a security interest in such vehicle which security interest has been filed with the department pursuant to the provisions of title ten of this chapter, at the address set forth in the records of such department, or for vehicles not registered in New York state, all persons holding a security interest in such vehicle which security interest has been filed with such state of registration, at the address provided by such state of registration.

7. Any owner who receives notice of the institution of a forfeiture action who claims an interest in the truck, tractor or tractor-trailer combination subject to forfeiture shall assert a claim for the recovery of such vehicle or satisfaction of the owner's interest in such vehicle by intervening in the forfeiture action in accordance with subdivision (a) of section one thousand twelve of the civil practice law and rules. Any person with a security interest in such vehicle who receives notice of the institution of the forfeiture action shall assert a claim for the satisfaction of such person's security interest in such vehicle by intervening in the forfeiture action in accordance with subdivision (a) of section one thousand twelve of the civil practice law and rules. If the action relates to a truck, tractor or tractor-trailer combination in which a person holding a security interest has intervened pursuant to this paragraph, the burden shall be upon the designated official to prove by clear and convincing evidence that such intervenor knew that

such vehicle was or would be used for the commission of a violation of a local law, ordinance, order, rule or regulation enacted by the legislative body of any city, village or town, pursuant to the provisions of paragraph ten of subdivision (a) of section sixteen hundred forty or paragraph ten of subdivision (a) of section sixteen hundred sixty of this chapter and either a. knowingly and unlawfully benefitted from such conduct or b. voluntarily agreed to the use of the vehicle for the commission of such violation by consent freely given. For purposes of this paragraph, such intervenor knowingly and unlawfully benefited from the commission of such violation when he or she derived in exchange for permitting the unlawful use of such vehicle by a person or persons committing such specified violation a substantial benefit that would otherwise not have accrued as a result of the lawful use of such vehicle. "Benefit" means benefit as defined in subdivision seventeen of section 10.00 of the penal law.

8. No truck, tractor or tractor-trailer combination shall be forfeited under this subdivision to the extent of the interest of a person who claims an interest in such vehicle, where such person pleads and proves that:

a. The use of such vehicle for the conduct that was the basis for a seizure occurred without the knowledge of such person, or if such person had knowledge of such use, without the consent of such person, and that such person did not knowingly obtain such interest in the vehicle in order to avoid the forfeiture of such vehicle; or

b. The conduct that was the basis for such seizure was committed by any person other than such person claiming an interest in the vehicle, while such vehicle was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

9. The court in which a forfeiture action is pending may dismiss said action in the interests of justice upon its own motion or upon an application as provided for herein.

a. At any time during the pendency of a forfeiture action, the designated official who instituted the action, or a defendant may apply for an order dismissing the complaint and terminating the forfeiture action in the interest of justice.

b. Such application for the relief provided in subparagraph a of this paragraph must be made in writing and upon notice to all parties. The court may, in its discretion, direct that notice be given to any other person having an interest in the property.

c. An application for the relief provided for in subparagraph a of this paragraph must be brought exclusively in the court in which the forfeiture action is pending.

d. The court may grant the relief provided in subparagraph a of this paragraph if it finds that such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture of the property or any part thereof, would not serve the ends of justice. Among the factors, considerations and circumstances the court may consider, among others, are:

(i) the seriousness and circumstances of the crime to which the property is connected relative to the impact of forfeiture of property upon the person who committed the crime; or

(ii) the adverse impact of a forfeiture of property upon innocent persons.

e. The court must issue a written decision stating the basis for an order issued pursuant to this subdivision.

10. The prosecuting authority having custody of the seized truck, tractor or tractor-trailer combination, after such judicial determination of forfeiture, shall, by a public notice of at least twenty days, sell such forfeited vehicle at public sale. The net proceeds of any such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the municipality wherein the seizure was made, and provided further that the net proceeds of the sale of a motor vehicle seized by the state police shall be paid into the state police seized assets account.

11. In any action commenced pursuant to this section, where the court awards a sum of money to one or more persons in satisfaction of such person's or persons' interest or interests in the forfeited truck, tractor or tractor-trailer combination, the total amount awarded to satisfy such interest or interests shall not exceed the amount of the net proceeds of the sale of the forfeited vehicle, after deduction of the lawful expenses incurred by the municipality or the state, as applicable, and storage of the vehicle between the time of seizure and the date of sale.

12. At any time within two years after the seizure, any person claiming an interest in a truck, tractor or tractor-trailer combination which has been forfeited pursuant to this subdivision who was not sent notice of the commencement of the forfeiture action pursuant to paragraph six of this subdivision, or who did not otherwise receive actual notice of the forfeiture action, may assert in an action commenced before the justice of the supreme court before whom the forfeiture action was held such claim as could have been asserted in the forfeiture action pursuant to this subdivision. The court may grant the relief sought upon such terms and conditions as it deems reasonable and just if the person claiming an interest in the truck, tractor or tractor-trailer combination establishes that he or she was not sent notice of the commencement of the forfeiture action and was without actual knowledge of the forfeiture action, and establishes either of the affirmative defenses set forth in paragraph eight of this subdivision.

13. No action under this subdivision for wrongful seizure shall be instituted unless such action is commenced within two years after the time when the truck, tractor or tractor-trailer combination was seized.

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