STATE OF NEW YORK

2593

2019-2020 Regular Sessions

IN ASSEMBLY

January 24, 2019

Introduced by M. of A. DINOWITZ, GOTTFRIED, BENEDETTO, CYMBROWITZ, SEAWRIGHT, RIVERA, ORTIZ, WRIGHT, GLICK, BARRON, NIOU, FAHY, JOYNER, D'URSO, COOK, COLTON, McDONOUGH -- Multi-Sponsored by -- M. of A. ABBATE, DE LA ROSA -- read once and referred to the Committee on Judiciary

AN ACT to amend the lien law, the general business law and the administrative code of the city of New York, in relation to liens against commercial towing companies for illegal and improper towing practices; to amend the civil practice law and rules, in relation to grounds for attachment; to amend the business corporation law, in relation to holding shareholders of non-publicly traded corporations personally liable for certain judgments; and to amend the limited liability company law, in relation to holding the ten members with the largest ownership interests in a company personally liable for certain judgments

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

Section 1. The lien law is amended by adding a new article 7-A to read as follows:

ARTICLE 7-A

LIEN ON COMMERCIAL TOWING COMPANIES FOR IMPROPER PRACTICES

Section 170. Lien for violations associated with illegal or improper practices relating to the towing of motor vehicles.

171. Enforcement of lien.

§ 170. Lien for violations associated with illegal or improper practices relating to the towing of motor vehicles. 1. A person shall have a lien against any interest in property of a commercial towing company arising out of any claim of illegal or improper practices relating to the towing of motor vehicles, as defined in section one hundred seven-b of the vehicle and traffic law, including by not limited to section 19-169.1 of the administrative code of the city of New York, for the

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

LBD01339-01-9

agreed price of such towing or, if the towing was without the prior consent or authorization of such motor vehicle owner, the amount charged for the service, from the time of filing a notice of such lien as prescribed in this chapter. In a city with a population of one million or more, charges for towing and associated storage shall not exceed the amounts set forth in section 20-509 of the administrative code of the city of New York. A lien under this section may be had for any amount over the limits set forth in such section. A lien under this article may be had against an interest in real property and against an interest in personal property that can be sufficiently described within the meaning of section 9-108 of the uniform commercial code, except that a lien under this article shall not extend to deposit accounts or goods as those terms are defined in section 9-102 of the uniform commercial code.

2. Notice of a lien under this section may be filed at any time not later than three years following violation giving rise to the claim. A notice of lien on personal property must be filed, together with a financing statement, in the filing office as set forth in section 9-501 of the uniform commercial code.

3. Within five days before or thirty days after filing the notice of a lien authorized pursuant to this article, the lienor shall serve a copy of such notice upon the owner of the commercial towing company, if a natural person, (a) by delivering the same to him or her personally, or if the owner cannot be found, to his or her agent or attorney, or (b) by leaving it as his or her last known place of residence or business, with a person of suitable age and discretion, or (c) by registered or certified mail addressed to his or her last known place of residence or business, or (d) if such person owns real property, by affixing a copy thereof conspicuously on such property, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon. The lienor also shall, within thirty days after filing the notice of lien, affix a copy thereof conspicuously on the real property identified in the notice of lien, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon. If the commercial towing company be a corporation, said service shall be made (i) by delivering such copy to and leaving the same with the president, vice-president, secretary or clerk to the corporation, the cashier, treasurer or a director or managing agent thereof, personally, within the state, or (ii) if such officer cannot be found within the state, by affixing a copy thereof conspicuously on such property between the hours of nine o'clock in the forenoon and four o'clock in the afternoon, or (iii) by registered or certified mail addressed to its last known place of business, or (iv) by delivery to the secretary of the department of state in the same manner as required by subparagraph one of paragraph (b) of section three hundred six of the business corporation law. Failure to file proof of such a service with the county clerk within thirty-five days after the notice of lien is filed shall terminate the notice as a lien. Until service of the notice has been made, as above provided, an owner, without knowledge of the lien, shall be protected in payment made in good faith to any other person claiming a lien.

4. (a) No lien on real property under this section shall be a lien for a longer period than one year after the notice of lien has been filed, unless an extension to such lien is filed with the county clerk of the county in which the notice of lien is filed within one year from the filing of the original notice of lien, continuing such lien and such lien shall be redocketed as of the date of filing such extension. Such

extension shall contain the names of the lienor and the owner of the real property against whose interest therein such lien is claimed, a brief description of the property affected by such lien, the amount of such lien, and the date of filing the notice of lien. No lien shall be continued by such extension for more than one year from the filing thereof. In the event an action is not commenced to obtain judgment on the claim or to foreclose the lien within such extended period, such lien shall be extinguished unless an order be granted by a court of record or a judge or justice thereof, continuing such lien, and such lien shall be redocketed as of the date of granting such order and a statement made that such lien is continued by virtue of such order.

(b) No lien on personal property under this section shall be a lien for a longer period than one year after the financing statement has been recorded, unless an extension to such lien, is filed with the filing office in which the financing statement is required to be filed pursuant to section 9-501 of the uniform commercial code within one year from the filing of the original financing statement, continuing such lien. Such extension shall contain the names of the lienor and the owner of the property against whose interest therein such lien is claimed, a brief description of the prior financing statement to be extended, and the date of filing the prior financing statement. No lien shall be continued by such extension for more than one year from the filing thereof. In the event an action is not commenced to obtain judgement on the claim or to foreclose the lien within such extended period, such lien shall be extinguished unless an order be granted by a court of record or a judge or justice thereof, continuing such lien, and such lien shall be refiled as of the date of granting such order and a statement made that such lien is continued by virtue of such order.

(c) If a lienor is made a party defendant in an action to enforce another lien, and the plaintiff or such defendant has filed a notice of the pendency of the action within the time prescribed in this section, the lien of such defendant is thereby continued. Such action shall be deemed an action to enforce the lien of such defendant lienor. The failure to file a notice of pendency of action shall not abate the action as to any person liable for the payment of the debt specified in the notice of lien, and the action may be prosecuted to judgment against such person. The provisions of this section in regard to continuing liens shall apply to liens discharged by deposit or by order on the filing of an undertaking. Where a lien is discharged by deposit or by order, a notice of pendency of action shall not be filed.

(d) Notwithstanding the foregoing, if a lienor commences a foreclosure action or an action to obtain a judgment on the claim within one year from the filing of the notice of lien on real property or the recording of the financing statement creating lien on personal property, the lien shall be extended during the pendency of the action and for one hundred twenty days following the entry of final judgment in such action, unless the action results in a final judgment or administrative order in the lienor's favor on the claims and the lienor commences a foreclosure action, in which instance the lien shall be valid during the pendency of the foreclosure action. If a lien is extended due to the pendency of a foreclosure action or an action to obtain a judgment on the claim, the lienor shall file a notice of such pendency and extension with the county clerk of the county in which the notice of lien is filed, containing the names of the parties to the action, the object of the action, a brief description of the property affected thereby, and the time of filing the notice of lien, or in the case of a lien on personal property

shall file such notice with the office authorized to accept financing statements pursuant to section 9-501 of the uniform commercial code.

(e) A lien, the duration of which has been extended by the filing of a notice of the pendency of an action as above provided, shall nevertheless terminate as a lien after such notice has been canceled as provided in section sixty-five hundred fourteen of the civil practice law and rules or has ceased to be effective as constructive notice as provided in section sixty-five hundred thirteen of the civil practice law and rules.

§ 171. Enforcement of lien. 1. A lien on real property authorized under this article may be enforced against such property, and against a person liable for the judgment upon which the lien is founded, by an action, by the lienor, his assignee or legal representative, in the supreme court or in a county court otherwise having jurisdiction, regardless of the amount of such judgment, or in a court which has jurisdiction in an action founded on a contract for a sum of money equivalent to the amount of such judgment, in the same manner as prescribed in article three of this chapter.

2. A lien on personal property specified in this article may immediately be enforced against the property through a foreclosure as prescribed in article nine of the uniform commercial code, or upon judgment obtained by the owner of the motor vehicle, or the attorney general of the state of New York, and may be enforced in any manner available to the judgment creditor pursuant to article nine of the uniform commercial code or other applicable laws.

3. A lien, where notice has been filed on real property or a bond given to discharge the same, may be vacated and cancelled or a deposit made to discharge a lien pursuant to section twenty of this chapter may be returned, by an order of a court of record. Before such order shall be granted, a notice shall be served upon the lienor, either personally or by leaving it at his last known place of residence or attorney's place of business, with a person of suitable age, with directions to deliver it to the lienor. Such notice shall require the lienor to commence an action to enforce the lien, or to commence an action to obtain judgment on the claim upon which the lien was established, within a time specified in the notice, not less than ninety days from the time of service, or show cause at a special term of a court of record, or at a county court, in a county in which the property is situated, at a time and place specified therein, why the notice of lien filed or the bond given should not be vacated and cancelled, or the deposit returned, as the case may be. Proof of such service and that the lienor has not commenced the action to foreclose such lien or an action to obtain judgment on the claim upon which the lien was established, as directed in the notice, shall be made by affidavit, at the time of applying for such order.

§ 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 opera-

tor of the vehicle shall be liable to the commercial tower for the cost of towing and repair services provided. **A written invoice stating the cost of the towing and/or services, signed by both the commercial tower and the owner or authorized user of the motor vehicle, shall be provided prior to any towing or services being performed.** The commercial tower shall accept cash 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.

§ 3. Section 20-509 of the administrative code of the city of New York is amended by adding a new subdivision e to read as follows:

e. A written invoice stating the cost of the towing and/or repair services, signed by both the commercial tower and the owner or authorized user of the motor vehicle, shall be provided prior to any towing or repair services being performed, except where the towing was without the prior consent or authorization of such motor vehicle owner. Upon the release of a towed motor vehicle the owner shall receive an invoice stating the amount charged and the amount paid.

§ 4. Subdivision 5 of section 6201 of the civil practice law and rules, as amended by chapter 860 of the laws of 1977 and as renumbered by chapter 618 of the laws of 1992, is amended and a new subdivision 6 is added to read as follows:

5. the cause of action is based on a judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state, or on a judgment which qualifies for recognition under the provisions of article 53[~~.~~] **of this chapter; or**

6. the cause of action is based on claims of illegal or improper practices relating to the towing of motor vehicles, including but not limited to violations of section 19-169.1 of the administrative code of the city of New York.

§ 5. The business corporation law is amended by adding a new section 631 to read as follows:

§ 631. Liability of shareholders of commercial towing companies for claims of illegal or improper towing practices.

(a) The ten largest shareholders, as determined by the fair value of their beneficial interest in every domestic corporation or of any foreign corporation, no shares of which are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or an affiliated securities association, shall jointly and severally be personally liable for all claims due and owing to any person as a result of an action to recover damages for violations associated with illegal or improper practices relating to the towing of motor vehicles, including but not limited to violations of section 19-169.1 of the administrative code of the city of New York.

(b) A shareholder who has paid more than his or her pro rata share under this section shall be entitled to contribution pro rata from the other shareholders liable under this section with respect to the excess so paid, over and above his or her pro rata share, and may sue them jointly or severally or any number of them to recover the amount due from them. Such recovery may be had in a separate action. As used in this paragraph, "pro rata" means in proportion to beneficial share interest. Before a shareholder may claim contribution from other shareholders under this paragraph, he or she shall give them notice in writing that he or she intends to hold them so liable to him or her. Such notice shall be given by him or her within twenty days after the date that notice was given under paragraph (a) of this section.

§ 6. Section 609 of the limited liability company law is amended by adding a new subdivision (e) to read as follows:

(e) Notwithstanding the provisions of subdivisions (a) and (b) of this section, the ten members with the largest percentage ownership interest of every limited liability company, shall jointly and severally be personally liable for all claims due and owing to any person as a result of an action to recover damages for violations associated with illegal or improper practices relating to the towing of motor vehicles, including but not limited to violations of section 19-169.1 of the administrative code of the city of New York.

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