

LOCAL LAW INTRO. NO. -2007

A LOCAL LAW amending the Laws of Westchester County in relation to the seizure of vehicles and tools used in connection with the unlicensed operation of a home improvement business.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. Subdivision "2." of Section 277.151 of the Laws of Westchester County is hereby amended to read as follows:

2. The person complained of shall have the right: (1) to subpoena witnesses to attend at any hearing held pursuant to this section using process issued by the Sealer as provided in section 182.61 of the County Charter; and (2) to request a hearing before a hearing officer. Such hearing officer shall be an attorney or a person with appropriate experience in consumer affairs and appointed by the Sealer from a list of hearing officers previously approved by the board. Such hearing officer shall be compensated at a rate of one hundred twenty-five dollars (\$125.00) per hour, not to exceed seven hundred fifty dollars (\$750.00) per day. Notwithstanding the provisions of this section, a hearing on a complaint alleging a violation of subdivision 1 of section 863.313 of the Consumer Code shall be held before the Sealer or the designee of the Sealer in accordance with subdivision 3 of section 863.327 of the Consumer Code.

Section 2. Subdivision "1." of Section 277.171 of the Laws of Westchester County is hereby amended to read as follows:

1. The hearing officer may impose for each proven violation of the code or for failure to comply with any order made pursuant thereto a civil penalty not to exceed \$1,000.00.

Each day that such violation or failure continues shall constitute a separate offense for which a penalty may be assessed. Any person found by the Sealer or the designee of the Sealer to be in violation of subdivision 1 of section 863.313 of the Consumer Code shall be liable for a civil penalty not to exceed \$1,000.00 for the first violation; not more than \$5,000.00 for the second violation within a five-year period; and not more than \$10,000.00 for the third and all subsequent violations within a ten-year period. Nothing herein contained shall be construed to exempt an offender from any other prosecution or penalty imposed by law. The penalty imposed hereunder and the reasonable costs and expenses attendant to its collection shall be recoverable from the offender in the same civil action brought by the County Attorney in the name of the County of Westchester;

Section 3. Chapter 873 of the Laws of Westchester County is hereby amended by adding a new section 863.327 to read as follows:

Sec. 863.327. Seizure and impoundment of vehicles and tools used in connection with the unlicensed operation of a home improvement business.

1. Any police officer or authorized officer, employee or agent of the Department of Consumer Protection - Weights and Measures, upon service on the operator of a vehicle and/or person in possession of tools or implements of a notice of violation for operating without a license required by subdivision 1 of section 863.313 of this article, may seize and impound any vehicle, tool or other implement which such officer has reasonable cause to believe is being used in connection with such violation. Any vehicle, tool or implement seized pursuant to this section shall be delivered into the custody of the Department of Public Safety or Department of Consumer Protection - Weights and Measures.

2. A person from whom a vehicle, tool or implement has been seized and impounded pursuant to this section shall receive notice at the time of such seizure and by overnight mail, as soon thereafter as practical informing such person how and when the vehicle, tool or implement may be reclaimed. In the event that the person from whom the vehicle was seized is not the registered owner of the vehicle, separate notice shall be provided by overnight mail to the registered owner of the vehicle. Notice shall also be provided to any lienholder in the same manner. For purposes of this section, the term "lienholder" shall, in the case of a vehicle, mean any person, corporation, partnership, firm, agency, association or other entity who at the time of a seizure pursuant to this section has a financial interest recorded as a lien with the Department of Motor Vehicles of the State of New York or any other state, territory, district, province, nation or other jurisdiction.

3. The Sealer or the designee of the Sealer shall hold a hearing in accordance with the provisions of section 277.151 of the Laws of Westchester County not otherwise in conflict with this section, to adjudicate the violation of subdivision 1 of section 863.313 of this article underlying the seizure and impoundment within five business days after the date of such seizure and impoundment and shall render his or her determination immediately following the conclusion of such hearing. Such determination shall also include a finding as to whether or not such vehicle, tool or other implement was used in connection with such violation, and if necessary, an additional finding as to whether the owner of such property, if not the person served with a notice of violation pursuant to subdivision 1 of this section, permitted the use of such property under circumstances evincing that such owner knew or should have known that such property would be used

for the conduct that was the basis for the seizure of the property. There shall be a rebuttable presumption that such owner knew or should have known that such property would be used for the conduct that was the basis for the seizure of the property, if such owner was the employer, parent, legal guardian or spouse of the person served with a notice of violation pursuant to subdivision 1 of this section at the time of the seizure.

4. A vehicle, tool or other implement seized and impounded pursuant to this section may be released to the owner of such property prior to the hearing provided in subdivision 3 of this section upon the posting of an all cash bond in a form satisfactory to the Sealer in an amount sufficient to cover: (a) the maximum civil penalties which may be imposed for the violation of subdivision 1 of section 863.313 of this article underlying the seizure and impoundment; (b) all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County against the person served with a notice of violation pursuant to subdivision 1 of this section - if the authorized agent seizing such property pursuant to subdivision 1 of this section alleges, based upon reasonable cause to believe, that such owner, if not the person served with a notice of violation pursuant to subdivision 1 of this section, permitted the use of such property under circumstances evincing that such owner knew or should have known that such property would be used for the alleged conduct that was the basis for the seizure of the property; and (c) all reasonable costs for removal and storage of such vehicle, tool or implement. In addition, release of such vehicle, tool or other implement to the owner of such property shall also require payment of all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County directly against such owner. Release to a person claiming such property shall be conditioned on presentation of, in the case of (i) a

vehicle, proof of ownership or authorization from the owner of the vehicle as ownership is defined by section 388 of the Vehicle and Traffic Law, or (ii) in the case of a tool or other implement or equipment, proof of ownership or authorization by the owner satisfactory to the Sealer.

5. Following an adjudication that has resulted in a determination that the vehicle, tool or other implement was used in connection with unlicensed activity in violation of subdivision 1 of section 863.313 of this article, release of such vehicle, tool or other implement to the owner of such property may be obtained upon payment of: (a) all civil penalties for the violation of subdivision 1 of section 863.313 of this article underlying the seizure and impoundment; (b) all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County directly against such owner; (c) all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County against the person served with a notice of violation pursuant to subdivision 1 of this section - if such owner was determined by the Sealer or the designee of the Sealer pursuant to subdivision 3 of this section, to have permitted the use of such property by the person served with a notice of violation pursuant to subdivision 1 of this section under circumstances evincing that such owner knew or should have known that such property would be used for the conduct that was the basis for the seizure of the property; and (d) all reasonable costs for removal and storage of such vehicle, tool or implement and proof of ownership as provided in subdivision 4 of this section.

6. No person shall obtain release of a vehicle, tool or other implement pursuant to subdivisions 4 and 5 of this section, unless and until such person submits an application

for a home improvement license, or reinstatement of such a license, as appropriate, to the Sealer in the form and containing the information required by the Sealer.

Notwithstanding the provisions of this section, in the event that the owner of the vehicle, tool or other implement was not the person who was served with a notice of violation alleging a violation of the provisions of subdivision 1 of section 863.313 of this article or found to be in violation of the provisions of subdivision 1 of section 863.313 of this article, such owner may obtain release upon payment of all applicable civil penalties and all reasonable costs of removal and storage as provided herein and upon execution of a sworn statement, subject to the provisions of the Penal Law relative to false statements and satisfactory to the Sealer, that he or she will not permit the person who is alleged to have violated or found to have violated such provisions to operate or possess the vehicle, tool or other implement in violation of subdivision 1 of section 863.313 of this article.

7. After adjudication of the violation underlying the seizure in accordance with subdivision 3 of this section, if the Sealer or the designee of the Sealer finds that the vehicle, tool or other implement has not been used in connection with unlicensed activity under the provisions of subdivision 1 of section 863.313 of this article, the Department of Consumer Protection - Weights and Measures shall promptly cause such vehicle, tool or other implement to be released to its lawful owner upon payment of all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County against such owner. If applicable, the Department of Consumer Protection - Weights and Measures shall also promptly return any cash bond posted pursuant to subdivision 4 of this section in accordance with the determination of the Sealer or the designee of the Sealer pursuant to subdivision 3 of this section. Upon demand of the

applicant, the Department of Consumer Protection - Weights and Measures shall refund fees, as appropriate, paid in connection with the submission of an application for a home improvement license pursuant to subdivision 6 of this section, provided that said applicant withdraws the application, if pending, or otherwise surrenders any home improvement license previously issued pursuant to such application.

Section 4. This Local Law shall take effect thirty days after it shall have become law.