

department may proceed against the owner. When an owner who is not the operator pays a civil fine, the owner may sue the operator to recover the civil fine.

When an operator of a vehicle owned by a lessor commits a parking, standing or stopping infraction, the lessor may escape liability by satisfying two requirements. First prior to the infraction, the lessor must file with the Department of Transportation the license number and state of registration of the vehicle. Second within 30 days of receiving notice of the infraction the lessor must provide the department with the name and address of the operator who committed the infraction and must notify the operator by mail of the notice of infraction. Failure to satisfy both of these requirements subjects a lessor to liability for an infraction.

When a lessor pays a civil fine and the department later collects the same fine from the operator, the department reimburses the lessor. When a lessor is liable for the infraction of an operator, the lessor is not required to pay any penalty unless the lessor fails to answer within 15 days of actual notice of the infraction.

Finally, section 304 requires the mayor to submit a report to the Council within one year of the effective date of this act. The report must indicate the number of notices of infraction issued to lessors, the fines and penalties for each infraction, the amount of fines and penalties paid, the number of outstanding infractions, and the amount of fines and penalties outstanding. The report may contain recommendations for future payment of fines and penalties. The purpose of this report is to permit evaluation of the effectiveness of this section.

Section 305 limits a respondent to one of three answers.

Admit. A respondent may admit the commission of an infraction. A respondent must pay the appropriate civil fine and penalties at the same time he files an "admit" answer. No hearing is required for an "admit" answer. Payment of the appropriate civil fine and penalties terminates the proceeding and results in an order establishing the commission of an infraction.

Admit with explanation. A respondent may admit the commission of an infraction with an explanation of the

circumstances involved in the infraction. An explanation may include any factor tending to excuse the infraction. An "admit with explanation" answer requires a hearing to determine appropriate sanctions. A hearing examiner may consider an explanation when determining sanctions.

Deny. A respondent may deny the commission or responsibility for the commission of an infraction. A "deny" answer requires a hearing to determine whether the respondent committed the infraction and, if necessary, to determine appropriate sanctions. If a respondent appears and refuses to enter an answer, a deny answer will be entered for him.

Section 305 authorizes three methods of filing an answer: in person, by mail and by telephone. The options of answering in person and by mail are always available to a respondent. If the Director of the Department of Transportation promulgates rules, the option of answering by telephone would also always be available to a respondent.

Section 305 requires a respondent to answer within 15 days of the issuance of a notice of infraction unless the Director of the Department of Transportation prescribes a greater period by regulation. Unlike moving infractions, failure to answer a notice for a parking, standing, stopping or pedestrian infraction cannot result in suspension of the respondent's operator's permit. Instead failure to answer can only subject the respondent to penalties as provided in section 105.

A respondent who desires the presence at the hearing of the officer who issued the notice of infraction must demand the officer at the same time the answer is filed.

Section 306 establishes the rules for hearings involving parking, standing, stopping and pedestrian infractions. Except as noted below, the procedures for these infractions are the same as the procedures for moving infractions, which are contained in section 206. (See description.)

Failure to appear. Unlike moving infractions, failure to appear at a hearing for a parking, standing, stopping or pedestrian infraction cannot result in suspension of a respondent's permit. However, failure to appear at a hearing for a parking, standing, stopping or pedestrian infraction can result in a default if the hearing examiner

determines that the infraction is established by a preponderance of the evidence.

Before a default judgment may be entered, the Department of Transportation must notify the respondent by regular mail and must afford the respondent 30 days to answer. If a default judgment is entered, the hearing examiner may set a civil fine and assess penalties.

A default judgment may not be set aside after one year has elapsed. Before expiration of one year, a default judgment may be set aside if the respondent submits a written application offering a sufficient defense to the charge and establishing that failure to attend the hearing resulted from excusable neglect.

Witnesses Unlike moving infractions, the officer who issued a notice is not automatically required to appear at a hearing where the respondent denies liability for a parking, standing, stopping or pedestrian infraction. Instead the officer must attend only if the respondent requests the officer's attendance when the answer is filed.

Like moving infractions, the officer who issues the notice need not appear at a hearing where a respondent admits or admits with explanation unless (1) the respondent requests the officer's appearance at the same time the answer is filed and the hearing examiner determines the officer would assist in setting a sanction or (2) the hearing examiner decides to call the officer.

Evidence The standard of proof for moving infractions is clear and convincing evidence. In contrast, the standard of proof for parking, standing, stopping, and pedestrian infractions is a preponderance of the evidence. Preponderance of the evidence, the usual standard for civil actions, is a less strict standard than clear and convincing evidence. A preponderance of the evidence is synonymous with greater weight of the evidence.

Decisions. The sanctions a hearing examiner may impose for parking standing, stopping, and pedestrian infractions are limited to civil fines and penalties. The option of requiring completion of traffic school, which is available for moving infractions, is not available for parking, standing, stopping, and pedestrian infractions.

If a respondent appeals a decision for a moving infraction, the hearing examiner may stay the sanction. In contrast, a hearing examiner may not stay the sanction when a respondent appeals a decision for a parking, standing, stopping, or pedestrian infraction.

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TITLE IV - ADMINISTRATIVE REVIEW

Section 401 establishes Appeals Boards to review decisions of hearing examiners under Title II and III of this act. When a respondent appeals a decision of a hearing examiner, the Director of the Department of Transportation appoints an Appeals Board to consider that appeal only. Although the director must appoint an Appeals Board for each appeal, he may appoint the same people to more than one Appeals Board. The director must appoint a chairperson for each Appeals Board from among its members.

Each Appeals Board must have three members: a Department of Transportation employee, an attorney and a citizen. The director may select the department employee from among the hearing examiners who have not previously considered the case. The director must select the attorney from a list of attorneys submitted by the D.C. Bar. However if the D.C. Bar does not submit a list, the director may select the attorney from a list of attorneys compiled by the director. The director must select the citizen from a list of citizens compiled by the director. In compiling the list of citizens, the director must consult with the various advisory neighborhood commissions.

Each Appeals Board member who is not a District employee must be paid at the rate of a GS-14 prorated for the actual hours worked. The current annual rate for a GS-14 is \$30,750. Each Appeals Board member who is a District employee may not receive additional compensation. Instead a District employee receives administrative leave for Appeals Board duties.

Each Appeals Board member, including the District employee, is entitled to reimbursement for actual expenses incurred. The director must designate department employees to assist the Appeals Boards. The director must provide facilities and supplies for the Appeals Boards.

Section 402 authorizes appeal of decisions of hearing examiners. A respondent may appeal either a determination of liability for an infraction or the sanction imposed for an infraction. When a respondent appeals a decision of a hearing examiner, the Director of the Department of Transportation must appoint an Appeals Board as provided in section 401.