

11158

I N   A S S E M B L Y

May 20, 2010

---

Introduced by M. of A. GANTT -- (at request of the Department of Motor Vehicles) -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to the temporary suspension of a repair shop registration or license, jurisdiction of repair shop appeals, and to repeal subdivisions 2 and 4 of section 398-f of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivision 1 of section 261 of the vehicle and traffic  
2 law, as amended by chapter 517 of the laws of 2007, is amended to read  
3 as follows:

4     1. Right of appeal. Whenever a license, certificate, permit or any  
5 privilege is denied, suspended or revoked by the commissioner pursuant  
6 to this chapter, except where such action is based upon a conviction as  
7 a result of which such action is required by statute or is based upon a  
8 determination rendered under the provisions of article two-A of [the  
9 vehicle and traffic law] THIS CHAPTER, the holder thereof may appeal  
10 such determination pursuant to the provisions of this article and such  
11 regulations as may be promulgated by the commissioner. In addition,  
12 following an adjudicatory proceeding conducted pursuant to section four  
13 hundred seventy-one-a of this chapter, an aggrieved party may appeal the  
14 commissioner's decision pursuant to the provisions of this article and  
15 such regulations as may be promulgated by the commissioner. [Notwith-  
16 standing the provisions of this subdivision, appeals from determinations  
17 made pursuant to article twelve-A of this chapter shall be governed in  
18 accordance with the provisions of that article.]

19     S 2. Paragraph (b) of subdivision 1 of section 398-f of the vehicle  
20 and traffic law, as added by chapter 641 of the laws of 1975, is amended  
21 to read as follows:

22     (b) No certificate of registration shall be suspended or revoked,  
23 penalty imposed or determination of gross negligence or gross overcharg-  
24 ing made as provided for pursuant to paragraph (h) of subdivision one of  
25 section three hundred ninety-eight-e of this article, until such regis-  
26 trant shall have been given the opportunity to be heard, upon written

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

LBD15768-01-0

1 notice to the registrant, before an officer or employee of the depart-  
2 ment designated for such purpose by the commissioner, provided, however,  
3 that where a notice of hearing is mailed to a registrant at the address  
4 shown in the records of the department and such registrant fails to  
5 attend such hearing, the commissioner may suspend such registration  
6 pending the [registrants] REGISTRANT'S attendance at such hearing.  
7 Requests for adjournment of such hearings shall be granted in accordance  
8 with regulations promulgated by the commissioner. A suspension pending  
9 attendance at a hearing shall not be appealable. PROVIDED, HOWEVER,  
10 THAT A CERTIFICATE OF REGISTRATION MAY BE TEMPORARILY SUSPENDED UPON  
11 WRITTEN NOTICE OF TEMPORARY SUSPENSION DELIVERED BY CERTIFIED MAIL TO  
12 THE REGISTRANT PENDING ANY PROSECUTION, INVESTIGATION OR HEARING INVOLV-  
13 ING AN ALLEGATION OF ANY CONDUCT ON THE PART OF THE REGISTRANT IN  
14 VIOLATION OF THE PROVISIONS OF PARAGRAPH (G), (H), (J), OR (K) OF SUBDI-  
15 VISION ONE OF SECTION THREE HUNDRED NINETY-EIGHT-E OF THIS ARTICLE. THE  
16 WRITTEN NOTICE OF TEMPORARY SUSPENSION SHALL PROVIDE THAT THE TEMPORARY  
17 SUSPENSION IS EFFECTIVE SEVENTY-TWO HOURS AFTER MAILING OF SUCH NOTICE  
18 AND THAT A HEARING BE SCHEDULED WITHIN TEN DAYS AFTER THE EFFECTIVE DATE  
19 OF THE TEMPORARY SUSPENSION.

20 S 3. Subdivision 2 of section 398-f of the vehicle and traffic law is  
21 REPEALED.

22 S 4. Subdivision 3 of section 398-f of the vehicle and traffic law, as  
23 added by chapter 641 of the laws of 1975, paragraph (a) and subparagraph  
24 2 of paragraph (b) as amended by chapter 448 of the laws of 1995, and  
25 subparagraphs 1 and 5 of paragraph (b) as amended by chapter 450 of the  
26 laws of 1996, is amended to read as follows:

27 3. Appeals. (a) The [review] APPEALS board ESTABLISHED PURSUANT TO  
28 ARTICLE THREE-A OF THIS CHAPTER will review and determine all appeals  
29 filed pursuant to this article. Such determination may be to affirm,  
30 reverse or modify the initial determination of the hearing officer, or  
31 to remand the case for a further hearing to determine additional facts.  
32 Any review by such board shall be based solely on the record upon which  
33 the initial determination is made and upon any written brief which may  
34 be submitted by or on behalf of the applicant or registrant.

35 (b) (1) Whenever a certificate of registration is suspended or  
36 revoked, an application for such registration denied, determination of  
37 gross negligence or gross overcharging made, the sealing of a premises  
38 ordered or penalty imposed by the commissioner pursuant to this article,  
39 except where such action is required by statute based upon a conviction,  
40 the registrant, applicant, or owner of the premises as such term is  
41 defined in paragraph (a) of subdivision five-a of section three hundred  
42 ninety-eight-i of this article may appeal such determination pursuant to  
43 the provisions of [this] article THREE-A OF THIS CHAPTER and such regu-  
44 lations as may be promulgated by the commissioner.

45 (2) [No appeal shall be reviewed unless it is submitted within sixty  
46 days after written notice of the determination appealed from is mailed  
47 to the registrant or applicant.

48 (3) Any person desiring to appeal pursuant to this article shall do  
49 so in a form and manner as provided by regulations promulgated by the  
50 commissioner. The transcript of any hearing will only be reviewed if it  
51 is submitted by the appellant who shall bear the expense of furnishing  
52 such transcript.

53 (4) The fee for filing an appeal shall be ten dollars. No appeal  
54 shall be deemed filed or submitted unless any required fee has been  
55 paid.

1 (5)] The submission of a written request to file such an appeal shall  
2 stay the operation of the initial determination until after a review is  
3 had and a determination has been made; provided, however, that failure  
4 to timely submit such appeal and comply with the provisions of this  
5 subdivision shall remove the stay imposed by this paragraph. Such  
6 review shall be made and decided as expeditiously as possible; provided  
7 that an appeal of an order directing the sealing of the premises pursu-  
8 ant to subdivision five-a of section three hundred ninety-eight-i of  
9 this article shall, to the extent possible, be given priority over all  
10 other appeals filed pursuant to this article.

11 (c) Whenever the same facts give rise to a hearing involving any  
12 other license or registration issued by the commissioner, a combined  
13 hearing may be held. [If the registrant appeals only from a determi-  
14 nation made with respect to his repair shop registration, he shall be  
15 entitled to a review as provided in subdivision one of this section;  
16 however, if he appeals from any determination or determinations made  
17 with respect to any other license or registration, as well as a determi-  
18 nation with respect to his repair shop registration, the appeals proce-  
19 dure established in article three-A of this chapter shall be followed in  
20 lieu of the procedure established in subdivision three of this section.]

21 S 5. Subdivision 4 of section 398-f of the vehicle and traffic law is  
22 REPEALED.

23 S 6. Paragraph (a) of subdivision 4 of section 398-i of the vehicle  
24 and traffic law, as added by chapter 891 of the laws of 1977, is amended  
25 to read as follows:

26 (a) If it is determined that a person has operated a repair shop with-  
27 out being registered as required by this article, such determination may  
28 be appealed to the [review] APPEALS board established pursuant to  
29 [section three hundred ninety-eight-f of this chapter. The procedure  
30 established in such section shall apply to such appeals] ARTICLE THREE-A  
31 OF THIS CHAPTER provided that no appeal shall be accepted or determined  
32 by the [review] APPEALS board unless the civil penalty assessed against  
33 such person has been paid as prescribed in subdivision two of this  
34 section.

35 S 7. This act shall take effect immediately, except that sections one,  
36 three, four, five, and six shall take effect on the thirtieth day after  
37 it shall have become a law and shall apply to appeals pending before the  
38 repair shop review board.