

4806

2009-2010 Regular Sessions

I N A S S E M B L Y

February 6, 2009

Introduced by M. of A. PHEFFER -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to the payment of restitution by registered and unregistered repair shops

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

1 Section 1. Subdivisions 2 and 3 of section 398-e of the vehicle and
2 traffic law, as amended by chapter 634 of the laws of 1980, paragraphs
3 (a) and (c) of subdivision 2 and paragraphs (a), (d) and (e) of subdivi-
4 sion 3 as amended by chapter 732 of the laws of 1987 and paragraph (c)
5 of subdivision 3 as amended by chapter 356 of the laws of 2001, are
6 amended to read as follows:

7 2. Civil penalty; suspension for failure to pay. (a) The commissioner,
8 or any person deputized by him, may, by order, require a registrant or
9 an unregistered repair shop to pay to the people of this state a penalty
10 as hereinafter provided. Such penalty may be imposed in addition to or
11 in lieu of revoking or suspending the certificate of registration of a
12 registrant in accordance with the provisions of this article, or such a
13 penalty may be imposed upon a finding that a registrant or an unregis-
14 tered repair shop: (i) has been grossly negligent in the performance of
15 any repair or adjustment covered by this article; or (ii) has grossly
16 overcharged for such repair or adjustment.

17 (b) (I) Such penalty shall be in a sum not exceeding three hundred
18 fifty dollars for each violation, except that if a finding of financial
19 loss has been made pursuant to subdivision three of this section, the
20 amount of such penalty may be increased by the amount of financial loss
21 so found. (II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF
22 THIS PARAGRAPH, IF A FINDING OF FINANCIAL LOSS HAS BEEN MADE PURSUANT TO
23 SUBDIVISION THREE OF THIS SECTION AND A REGISTRANT OR UNREGISTERED
24 REPAIR SHOP FAILS TO COMPLY WITH AN ORDER TO PAY RESTITUTION IN THE TIME
25 AND MANNER PROVIDED BY SUCH SUBDIVISION, THE COMMISSIONER SHALL, BY

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

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1 ORDER, INCREASE THE AMOUNT OF THE PENALTY ASSESSED PURSUANT TO SUBPARA-
2 GRAPH (I) OF THIS PARAGRAPH BY:

3 (A) THE SUM OF AN ADDITIONAL AMOUNT NOT TO EXCEED FIVE HUNDRED DOLLARS
4 AND THE AMOUNT OF FINANCIAL LOSS SO FOUND, IF THE AMOUNT OF THE PENALTY
5 IMPOSED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH DID NOT INCLUDE
6 SUCH FINANCIAL LOSS; OR

7 (B) AN ADDITIONAL AMOUNT NOT TO EXCEED FIVE HUNDRED DOLLARS, IF THE
8 AMOUNT OF THE PENALTY IMPOSED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARA-
9 GRAPH INCLUDED SUCH FINANCIAL LOSS.

10 (c) Upon the failure of a registrant or an unregistered repair shop to
11 pay such penalty, or, where the order so [permits] REQUIRES, to make
12 restitution as provided in subdivision three of this section, within
13 thirty days after the mailing of such order, postage prepaid, registered
14 or certified, and addressed to the last known place of business of such
15 registrant or unregistered repair shop, unless such order is stayed as
16 provided in subdivision three of section three hundred ninety-eight-f of
17 this chapter, the commissioner may revoke the certificate of registra-
18 tion of such registrant or may suspend the same for such period as he
19 may determine or may seek to recover unpaid civil penalties in a civil
20 action in the name of the commissioner. Civil penalties assessed under
21 this subdivision shall be paid to the commissioner for deposit into the
22 state treasury.

23 (d) In addition, as an alternative to such civil action and provided
24 that no proceeding for judicial review shall then be pending and the
25 time for initiation of such proceeding shall have expired, the commis-
26 sioner may file with the county clerk of the county in which the regis-
27 trant is located a final order of the commissioner containing the amount
28 of the penalty assessed PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION.
29 The filing of such final order shall have the full force and effect of a
30 judgment duly docketed in the office of such clerk and may be enforced
31 in the same manner and with the same effect as that provided by law in
32 respect to executions issued against property upon judgments of a court
33 of record.

34 3. Restitution; assessment. (a) Upon a determination that a registrant
35 or an unregistered repair shop has done or failed to do any act for
36 which suspension of the registrant's registration or a civil penalty
37 against the registrant or unregistered repair shop could be imposed, the
38 person making such determination may make a finding of financial loss to
39 any complainant or complainants resulting from the actions of the regis-
40 trant or unregistered repair shop. The person making such finding may
41 provide that if the registrant or unregistered repair shop makes resti-
42 tution to the complainant or complainants for the amount or amounts so
43 found, that payment of such restitution may be substituted in lieu of
44 any suspension or civil penalty, or a specified portion thereof imposed
45 upon the registrant or unregistered repair shop MAY BE WAIVED UPON
46 PAYMENT OF SUCH RESTITUTION. However, a finding of financial loss shall
47 only be made if the complainant (i) agrees to accept the amount so
48 found, if offered by the registrant or unregistered repair shop, and
49 (ii) is not a party to any litigation which is pending or which has gone
50 to judgment in relation to the same matter in any civil court.

51 (b) The amount of financial loss which may be found and proposed as
52 restitution shall be limited to an amount necessary to repair the vehi-
53 cle or vehicles in question and/or any amount of overcharge which may be
54 found. Neither punitive nor incidental damages may be included in the
55 finding of financial loss.

1 (c) If payment of restitution to the complainant is [authorized in
2 lieu of all or a portion of a suspension or civil penalty] ORDERED, in
3 order for the registrant or unregistered repair shop to exercise the
4 option to [make such payment] AVOID ALL OR A PORTION OF A SUSPENSION OR
5 CIVIL PENALTY, such payment must be made by means of a certified check
6 or money order payable to the complainant or complainants delivered to
7 an office of the department as directed by the commissioner or his agent
8 within thirty days of the date of notice of A FINDING OF FINANCIAL LOSS,
9 suspension and/or civil penalty. Upon receipt of such certified check or
10 money order, the department shall forward the same to the complainant or
11 complainants. In the event that the registrant or unregistered repair
12 shop should fail to make payment for restitution within such thirty
13 days, but, at a later time, pays such civil penalty, the department
14 shall deduct from such civil penalty payment the amount assessed for
15 restitution, and shall mail a check for such amount to the complainant
16 or complainants.

17 (d) If payment of restitution [may be substituted in lieu of a civil
18 penalty or portion of a civil penalty] IS ORDERED, and the registrant or
19 unregistered repair shop [does not exercise the option] FAILS to make
20 such payment, the civil penalty [becomes] SHALL BE due as provided in
21 subdivision two of this section and the provisions of that subdivision
22 relating to suspension of registration and recovery of civil penalties
23 shall apply.

24 (e) Any payment made in compliance with such a finding of financial
25 loss shall not preclude any civil action which may be brought by the
26 complainant, registrant or unregistered repair shop, and any such find-
27 ing may be considered but shall not be binding upon any court before
28 which any such action is brought.

29 S 2. This act shall take effect on the first of November next succeed-
30 ing the date on which it shall have become a law; provided, however,
31 that effective immediately, the addition, amendment and/or repeal of any
32 rule or regulation necessary for the implementation of this act on its
33 effective date are authorized to be made on or before such effective
34 date.