

S T A T E O F N E W Y O R K

4806--A

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 -- recommitted to the Committee on Transportation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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, paragraph (b) of
5 subdivision 2 as amended by section 2 of part 00 of chapter 59 of the
6 laws of 2009 and paragraph (c) of subdivision 3 as amended by chapter
7 356 of the laws of 2001, are amended to read as follows:
8 2. Civil penalty; suspension for failure to pay. (a) The commissioner,
9 or any person deputized by him, may, by order, require a registrant or
10 an unregistered repair shop to pay to the people of this state a penalty
11 as hereinafter provided. Such penalty may be imposed in addition to or
12 in lieu of revoking or suspending the certificate of registration of a
13 registrant in accordance with the provisions of this article, or such a
14 penalty may be imposed upon a finding that a registrant or an unregis-
15 tered repair shop: (i) has been grossly negligent in the performance of
16 any repair or adjustment covered by this article; or (ii) has grossly
17 overcharged for such repair or adjustment.
18 (b) (I) Such penalty for a first violation shall be in a sum not
19 exceeding seven hundred fifty dollars for each violation found to have
20 been committed, and for a second or subsequent violation not arising out
21 of the same incident both of which were committed within a period of
22 thirty months, be in a sum of not more than one thousand dollars for

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

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1 each violation found to have been committed; provided, however, the
2 penalty for each and any violation of paragraph (g) of subdivision one
3 of this section found to have been committed shall be no less than three
4 hundred and fifty dollars and no more than one thousand dollars, except
5 that if a finding of financial loss has been made pursuant to subdivi-
6 sion three of this section, the amount of such penalty may be increased
7 by the amount of financial loss so found. (II) NOTWITHSTANDING THE
8 PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, IF A FINDING OF FINAN-
9 CIAL LOSS HAS BEEN MADE PURSUANT TO SUBDIVISION THREE OF THIS SECTION
10 AND A REGISTRANT OR UNREGISTERED REPAIR SHOP FAILS TO COMPLY WITH AN
11 ORDER TO PAY RESTITUTION IN THE TIME AND MANNER PROVIDED BY SUCH SUBDI-
12 VISION, THE COMMISSIONER SHALL, BY ORDER, INCREASE THE AMOUNT OF THE
13 PENALTY ASSESSED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH BY:

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

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

21 (c) Upon the failure of a registrant or an unregistered repair shop to
22 pay such penalty, or, where the order so [permits] REQUIRES, to make
23 restitution as provided in subdivision three of this section, within
24 thirty days after the mailing of such order, postage prepaid, registered
25 or certified, and addressed to the last known place of business of such
26 registrant or unregistered repair shop, unless such order is stayed as
27 provided in subdivision three of section three hundred ninety-eight-f of
28 this [chapter] ARTICLE, the commissioner may revoke the certificate of
29 registration of such registrant or may suspend the same for such period
30 as he may determine or may seek to recover unpaid civil penalties in a
31 civil action in the name of the commissioner. Civil penalties assessed
32 under this subdivision shall be paid to the commissioner for deposit
33 into the state treasury.

34 (d) In addition, as an alternative to such civil action and provided
35 that no proceeding for judicial review shall then be pending and the
36 time for initiation of such proceeding shall have expired, the commis-
37 sioner may file with the county clerk of the county in which the regis-
38 trant is located a final order of the commissioner containing the amount
39 of the penalty assessed PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION.
40 The filing of such final order shall have the full force and effect of a
41 judgment duly docketed in the office of such clerk and may be enforced
42 in the same manner and with the same effect as that provided by law in
43 respect to executions issued against property upon judgments of a court
44 of record.

45 3. Restitution; assessment. (a) Upon a determination that a registrant
46 or an unregistered repair shop has done or failed to do any act for
47 which suspension of the registrant's registration or a civil penalty
48 against the registrant or unregistered repair shop could be imposed, the
49 person making such determination may make a finding of financial loss to
50 any complainant or complainants resulting from the actions of the regis-
51 trant or unregistered repair shop. The person making such finding may
52 provide that if the registrant or unregistered repair shop makes resti-
53 tution to the complainant or complainants for the amount or amounts so
54 found, that payment of such restitution may be substituted in lieu of
55 any suspension or civil penalty, or a specified portion thereof imposed
56 upon the registrant or unregistered repair shop MAY BE WAIVED UPON

1 PAYMENT OF SUCH RESTITUTION. However, a finding of financial loss shall
2 only be made if the complainant (i) agrees to accept the amount so
3 found, if offered by the registrant or unregistered repair shop, and
4 (ii) is not a party to any litigation which is pending or which has gone
5 to judgment in relation to the same matter in any civil court.

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

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

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

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

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