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

7438

I N S E N A T E

April 9, 2010

Introduced by Sen. DILAN -- (at request of the Department of Motor Vehicles) -- read twice and ordered printed, and when printed to be committed 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:

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

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

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

(b) No certificate of registration shall be suspended or revoked, penalty imposed or determination of gross negligence or gross overcharging made as provided for pursuant to paragraph (h) of subdivision one of section three hundred ninety-eight-e of this article, until such regis-

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

LBD15768-01-0

trant shall have been given the opportunity to be heard, upon written notice to the registrant, before an officer or employee of the department designated for such purpose by the commissioner, provided, however, that where a notice of hearing is mailed to a registrant at the address shown in the records of the department and such registrant fails to attend such hearing, the commissioner may suspend such registration pending the [registrants] REGISTRANT'S attendance at such hearing. Requests for adjournment of such hearings shall be granted in accordance with regulations promulgated by the commissioner. A suspension pending attendance at a hearing shall not be appealable. PROVIDED, HOWEVER, THAT A CERTIFICATE OF REGISTRATION MAY BE TEMPORARILY SUSPENDED UPON WRITTEN NOTICE OF TEMPORARY SUSPENSION DELIVERED BY CERTIFIED MAIL TO THE REGISTRANT PENDING ANY PROSECUTION, INVESTIGATION OR HEARING INVOLVING AN ALLEGATION OF ANY CONDUCT ON THE PART OF THE REGISTRANT IN VIOLATION OF THE PROVISIONS OF PARAGRAPH (G), (H), (J), OR (K) OF SUBDIVISION ONE OF SECTION THREE HUNDRED NINETY-EIGHT-E OF THIS ARTICLE. THE WRITTEN NOTICE OF TEMPORARY SUSPENSION SHALL PROVIDE THAT THE TEMPORARY SUSPENSION IS EFFECTIVE SEVENTY-TWO HOURS AFTER MAILING OF SUCH NOTICE AND THAT A HEARING BE SCHEDULED WITHIN TEN DAYS AFTER THE EFFECTIVE DATE OF THE TEMPORARY SUSPENSION.

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

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

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

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

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

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

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

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

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

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

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

(a) If it is determined that a person has operated a repair shop without being registered as required by this article, such determination may be appealed to the [review] APPEALS board established pursuant to [section three hundred ninety-eight-f of this chapter. The procedure established in such section shall apply to such appeals] ARTICLE THREE-A OF THIS CHAPTER provided that no appeal shall be accepted or determined by the [review] APPEALS board unless the civil penalty assessed against such person has been paid as prescribed in subdivision two of this section.

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