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

917

2009-2010 Regular Sessions

I N S E N A T E

January 21, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules and the general business law, in relation to tampering with odometers of motor vehicles

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

Section 1. Paragraph 6 of subdivision (a) of section 8303 of the civil practice law and rules, as amended by chapter 530 of the laws of 2002, is amended to read as follows:

6. to the plaintiffs in an action or proceeding brought by the attorney-general under [articles] ARTICLE twenty-two, twenty-two-A, twenty-three-A or thirty-three or section three hundred ninety-one-b, THREE HUNDRED NINETY-TWO-E or five hundred twenty-a of the general business law, or under subdivision twelve of section sixty-three of the executive law, or under article twenty-three of the arts and cultural affairs law, or in an action or proceeding brought by the attorney-general under applicable statutes to dissolve a corporation or for usurpation of public office, or unlawful exercise of franchise or of corporate right, a sum not exceeding two thousand dollars against each defendant.

S 2. Section 392-e of the general business law, as added by chapter 958 of the laws of 1969 and subdivision 2-a as added by chapter 404 of the laws of 2001, is amended to read as follows:

S 392-e. Using false statements or altering mileage registering devices. 1. Upon the transfer of ownership of a motor vehicle, the seller shall enter on any instrument executed by him, including any form prescribed by the commissioner of motor vehicles, and on any other bill of sale, certificate, or evidence of title or condition given by him at the time of transfer or sale, the mileage said motor vehicle purports to have been operated as the same appears upon the odometer in such motor vehicle. In the event that such odometer mileage is known to the seller to be less than such motor vehicle has actually travelled, the seller

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

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shall enter upon any said transfer instrument or statement "True mileage unknown." In the event that it is known to the seller that the mileage indicated on such odometer is beyond its designed mechanical limits, he shall state the total cumulative mileage on the aforesaid prescribed transfer instruments. Any person, firm, partnership, or corporation who, WITH INTENT TO DEFRAUD, gives a false statement to a transferee under the provisions of this section, shall be guilty of a CLASS A misdemeanor, FOR A FIRST OFFENSE INVOLVING ONLY ONE MOTOR VEHICLE OR SHALL BE GUILTY OF A CLASS E FELONY FOR ANY SUBSEQUENT OFFENSE COMMITTED WITHIN TEN YEARS OF A PREVIOUS VIOLATION OF THIS SECTION OR FOR AN OFFENSE UNDER THIS SECTION INVOLVING MORE THAN ONE MOTOR VEHICLE, provided, however, that no person, firm, partnership, or corporation shall be convicted under the section where a vehicle has been resold in reliance on the required statement of the prior owner and pursuant to the provisions of [subdivision one, two, three and four of section three hundred ninety-two-e] THIS SECTION.

2. A person, firm, partnership, or corporation who, WITH INTENT TO DEFRAUD, shall misrepresent the mileage of a motor vehicle to a transferee by the execution and delivery of the written statement required in [the preceding paragraph hereof] SUBDIVISION ONE OF THIS SECTION and which in fact is false, or who, WITH INTENT TO DEFRAUD, shall misrepresent such mileage to a transferee by disconnection, changing, or causing to be disconnected or changed any mileage registering device on a motor vehicle so as to thereby indicate a lesser mileage than such motor vehicle has actually travelled, shall be guilty of a CLASS A misdemeanor FOR A FIRST OFFENSE INVOLVING ONLY ONE MOTOR VEHICLE OR SHALL BE GUILTY OF A CLASS E FELONY FOR ANY SUBSEQUENT OFFENSE COMMITTED WITHIN TEN YEARS OF A PREVIOUS VIOLATION OF THIS SECTION OR FOR AN OFFENSE UNDER THIS SECTION INVOLVING MORE THAN ONE MOTOR VEHICLE.

2-a. (a) No person, firm, partnership, or corporation shall, prior to the transfer of ownership of a motor vehicle, misrepresent by any statement, express or implied and which in fact is false, the mileage said motor vehicle purports to have been operated as the same appears on the odometer in such motor vehicle. Nothing contained herein shall be deemed to [supercede] SUPERSEDE the provisions of any other subdivision of this section.

(b) A violation of this subdivision shall be subject to a fine not to exceed five hundred dollars for each violation; provided, however, that a knowing or willful violation of this subdivision shall be subject to a fine not to exceed one thousand five hundred dollars for each such violation. No person, firm, partnership, or corporation shall be deemed to have violated this subdivision where the vehicle is sold, offered for sale, or advertised for sale in reliance on the required statement of the prior owner and pursuant to the provisions of subdivisions one, two, [three and] four AND FIVE of this section.

(c) Unless the misrepresentation was made with an intent to defraud, the provisions of paragraphs (a) and (b) of this subdivision shall not apply to a statement made regarding a vehicle the most current ownership document for which is a salvage certificate or like document issued by a state or jurisdiction or regarding a vehicle sold by a salvage pool registered under section four hundred fifteen-a of the vehicle and traffic law.

3. ANY PERSON WHO, WITH INTENT TO DEFRAUD, DISCONNECTS OR CHANGES THE ODOMETER ON A MOTOR VEHICLE SO AS TO THEREBY INDICATE A LESSER MILEAGE THAN SUCH MOTOR VEHICLE HAS ACTUALLY TRAVELLED, SHALL BE GUILTY OF A CLASS A MISDEMEANOR FOR A FIRST OFFENSE INVOLVING ONLY ONE MOTOR VEHICLE

OR SHALL BE GUILTY OF A CLASS E FELONY FOR ANY SUBSEQUENT OFFENSE COMMITTED WITHIN TEN YEARS OF A PREVIOUS VIOLATION OF THIS SECTION OR FOR AN OFFENSE UNDER THIS SECTION INVOLVING MORE THAN ONE MOTOR VEHICLE.

4. Nothing herein contained shall prevent the service, repair or replacement of a mileage registering device, provided the mileage indicated thereon remains the same as before the service, repair or replacement; or provided the mileage registering device reads zero and a notice in writing is attached to the left front door frame of the vehicle by the owner or his agent, indicating the mileage prior to replacement and the date on which it was replaced. Any unauthorized removal of such notice so affixed shall constitute a violation of subdivision two of [section three hundred ninety-two-e] THIS SECTION.

[4] 5. This section shall not apply to new motor vehicles. A new motor vehicle is one sold or transferred by a manufacturer, distributor or dealer and which has not been placed in consumer use or has not been used as a demonstrator.

6. ANY PERSON WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME TO RECOVER ACTUAL DAMAGES OR FIVE HUNDRED DOLLARS, WHICHEVER IS GREATER. THE COURT MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO AN AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES OR ONE THOUSAND FIVE HUNDRED DOLLARS, WHICHEVER IS GREATER, IF THE COURT FINDS THE DEFENDANT WILLFULLY AND KNOWINGLY VIOLATED THIS SECTION. THE COURT MAY AWARD COSTS AND REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

7. WHENEVER THE ATTORNEY GENERAL SHALL BELIEVE FROM EVIDENCE SATISFACTORY TO HIM OR HER THAT ANY PERSON, FIRM, PARTNERSHIP, CORPORATION OR ASSOCIATION OR AGENT OR EMPLOYEE THEREOF, HAS VIOLATED ANY PROVISION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

8. THE DEPARTMENT OF LAW MAY PROSECUTE EVERY PERSON, FIRM, PARTNERSHIP, CORPORATION OR ASSOCIATION OR AGENT OR EMPLOYEE CHARGED WITH A CRIMINAL OFFENSE IN VIOLATION OF THIS SECTION. IN ALL SUCH PROCEEDINGS, THE DEPARTMENT MAY APPEAR BEFORE ANY COURT OF RECORD OR ANY GRAND JURY AND PERFORM ALL THE DUTIES IN RESPECT OF SUCH ACTIONS OR PROCEEDINGS WHICH THE DISTRICT ATTORNEY WOULD OTHERWISE BE AUTHORIZED OR REQUIRED TO EXERCISE OR PERFORM. THE DEPARTMENT MAY INCLUDE IN AN ACTION UNDER THIS SUBDIVISION AN APPLICATION TO DIRECT RESTITUTION, DAMAGES AND PENALTIES.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.