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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

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 subdivision
4 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 unregistered
15 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
23 each violation found to have been committed; provided, however, the
24 penalty for each and any violation of paragraph (g) of subdivision one

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

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1 of this section found to have been committed shall be no less than three
2 hundred and fifty dollars and no more than one thousand dollars, except
3 that if a finding of financial loss has been made pursuant to subdivi-
4 sion three of this section, the amount of such penalty may be increased
5 by the amount of financial loss so found.

6 (II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARA-
7 GRAPH, IF A FINDING OF FINANCIAL LOSS HAS BEEN MADE PURSUANT TO SUBDIVI-
8 SION THREE OF THIS SECTION AND A REGISTRANT OR UNREGISTERED REPAIR SHOP
9 FAILS TO COMPLY WITH AN ORDER TO PAY RESTITUTION IN THE TIME AND MANNER
10 PROVIDED BY SUCH SUBDIVISION, THE COMMISSIONER SHALL, BY ORDER, INCREASE
11 THE AMOUNT OF THE PENALTY ASSESSED PURSUANT TO SUBPARAGRAPH (I) OF THIS
12 PARAGRAPH BY:

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

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

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

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

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

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

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

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

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

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

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