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

1153

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:

Section 1. Subdivisions 2 and 3 of section 398-e of the vehicle and traffic law, as amended by chapter 634 of the laws of 1980, paragraphs (a) and (c) of subdivision 2 and paragraphs (a), (d) and (e) of subdivision 3 as amended by chapter 732 of the laws of 1987, paragraph (b) of subdivision 2 as amended by section 2 of part OO of chapter 59 of the laws of 2009 and paragraph (c) of subdivision 3 as amended by chapter 356 of the laws of 2001, are amended to read as follows:

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

(b) (I) Such penalty for a first violation shall be in a sum not exceeding seven hundred fifty dollars for each violation found to have been committed, and for a second or subsequent violation not arising out of the same incident both of which were committed within a period of thirty months, be in a sum of not more than one thousand dollars for each violation found to have been committed; provided, however, the 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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of this section found to have been committed shall be no less than three hundred and fifty dollars and no more than one thousand dollars, except that if a finding of financial loss has been made pursuant to subdivision three of this section, the amount of such penalty may be increased by the amount of financial loss so found.

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

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

(B) AN ADDITIONAL AMOUNT NOT TO EXCEED FIVE HUNDRED DOLLARS, IF THE AMOUNT OF THE PENALTY IMPOSED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH INCLUDED SUCH FINANCIAL LOSS.

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

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

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

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

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

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

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

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

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