

910

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

---

Introduced by M. of A. WEPRIN -- 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 ASSEM-  
BLY, 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  
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.

LBD03918-01-3

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.