

# STATE OF NEW YORK

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2751

2019-2020 Regular Sessions

## IN SENATE

January 29, 2019

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Introduced by Sen. COMRIE -- 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 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 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  
25 of this section found to have been committed shall be no less than three

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

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

5 (ii) Notwithstanding the provisions of subparagraph (i) of this para-  
6 graph, if a finding of financial loss has been made pursuant to subdivi-  
7 sion three of this section and a registrant or unregistered repair shop  
8 fails to comply with an order to pay restitution in the time and manner  
9 provided by such subdivision, the commissioner shall, by order, increase  
10 the amount of the penalty assessed pursuant to subparagraph (i) of this  
11 paragraph by:

12 (A) the sum of an additional amount not to exceed five hundred dollars  
13 and the amount of financial loss so found, if the amount of the penalty  
14 imposed pursuant to subparagraph (i) of this paragraph did not include  
15 such financial loss; or

16 (B) an additional amount not to exceed five hundred dollars, if the  
17 amount of the penalty imposed pursuant to subparagraph (i) of this para-  
18 graph included such financial loss.

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

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

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

1 found, if offered by the registrant or unregistered repair shop, and  
2 (ii) is not a party to any litigation which is pending or which has gone  
3 to judgment in relation to the same matter in any civil court.

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

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

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

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

37 § 2. This act shall take effect on the first of November next succeed-  
38 ing the date on which it shall have become a law. Effective immediately,  
39 the addition, amendment and/or repeal of any rule or regulation neces-  
40 sary for the implementation of this act on its effective date are  
41 authorized to be made on or before such effective date.