§ 398-e. Suspension, revocation or refusal to issue registration; civil penalty; restitution; surrender of certificate of registration. 1. Suspension, revocation or refusal to issue registration or license. The commissioner, or any person deputized by him, may deny the application of any person for a certificate of registration or estimator's license and may suspend or revoke the registration of any motor vehicle repair shop or any estimator's license issued pursuant to this article or refuse to issue a renewal thereof if he determines that such applicant, registrant or licensee:

(a) has made a material false statement or concealed a material fact in connection with his application;

(b) was the former holder of a certificate of registration issued hereunder which was revoked or suspended by the commissioner;

(c) was, or that any officer, director, partner or stockholder holding more than ten percent of the outstanding stock was an officer, director, partner or stockholder holding more than ten percent of the outstanding stock in a corporation or partnership, as the case may be, which was the former holder of a certificate of registration issued hereunder which was revoked or suspended by the commissioner;

(d) has failed to furnish satisfactory evidence of good character, reputation and fitness;

(e) does not have a place of business as required by this article;

(f) is not the true owner of the repair shop, except in the case of a franchise;

(g) has been guilty of fraud or fraudulent or deceptive practices;

(h) has been grossly negligent on two or more occasions within a period of two years in the performance of any repair or adjustment covered by this article, or has grossly overcharged on two or more occasions within a period of two years for such repair or adjustment;

(i) has wilfully failed to comply with any of the provisions of this article or the rules and regulations of the commissioner promulgated hereunder;

(j) has knowingly issued a false or misleading estimate;

(k) has engaged in a course of conduct which unreasonably impedes or delays a consumer's right to a fair recovery pursuant to the provisions of an automobile insurance policy, the insurance law or regulations issued by the superintendent of financial services governing the

evaluation and adjustments of claims; or

(l) has wilfully violated paragraph (b) of subdivision thirty-one, subdivision thirty-one-a or subdivision thirty-one-b of section three hundred seventy-five of this chapter.

For the purposes of paragraphs (g), (h), (i), (j) and (k) of this subdivision, it shall be presumed that the actions of any employee of a motor vehicle repair shop shall be attributable to, and deemed to be the actions of, such motor vehicle repair shop.

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) 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 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.

(c) Upon the failure of a registrant or an unregistered repair shop to pay such penalty, or, where the order so permits, 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, 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. 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. 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, in order for the registrant or unregistered repair shop to exercise the option to make such payment, 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 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, and the registrant or unregistered repair shop does not exercise the option to make such payment, the civil penalty becomes 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.

4. Surrender of certificate of registration. Upon the suspension or revocation of a certificate of registration by the commissioner and the issuance of notice thereof, the registrant shall immediately deliver the certificate of registration to the commissioner or to any peace officer, acting pursuant to his special duties, or police officer directed by the commissioner to secure possession thereof, or agent of the commissioner, displaying authorization to act in such capacity along with a certified

copy of the order revoking or suspending such registration, and the failure to so deliver the certificate within thirty days shall constitute a traffic infraction and shall be punishable in the manner provided in section eighteen hundred of this chapter.