§ 398-i. Unregistered operation; procedures and penalties. 1. The commissioner or any person deputized by him shall hear and determine any allegation that a person has operated a repair shop without being registered as required by subdivision one of section three hundred ninety-eight-c of this chapter. Upon a determination that a person has so operated, the commissioner or person deputized by him shall assess civil penalties as provided in subdivisions two and three of this section.

2. Except as provided in subdivision three, any person who operates a repair shop without being registered shall be required to pay to the people of this state a civil penalty in the sum of one thousand dollars. However, any such person against whom such penalty has been assessed may avoid all but five hundred dollars of such penalty by obtaining a registration as required by this article, provided that application for such registration is made not more than ten days after the imposition of such penalty.

3. (a) Any person who operates a repair shop while his repair shop registration is revoked or suspended, shall pay to the people of this state a civil penalty in the sum of one thousand dollars. Such civil penalty may not be avoided.

(b) Any person who operates a repair shop without being registered as required by subdivision one of section three hundred ninety-eight-c of this chapter who has previously had a civil penalty assessed for unregistered operation shall pay to the people of this state a civil penalty in the sum of one thousand dollars. Such civil penalty may not be avoided.

4. (a) If it is determined that a person has operated a repair shop without being registered as required by this article, such determination may be appealed to the review board established pursuant to section three hundred ninety-eight-f of this chapter. The procedure established in such section shall apply to such appeals provided that no appeal shall be accepted or determined by the review board unless the civil penalty assessed against such person has been paid as prescribed in subdivision two of this section.

(b) The requirement that the civil penalty be paid before an appeal can be accepted or determined by the review board shall not apply to an appeal by a repair shop from a determination made pursuant to subdivision three of this section.

(c) If the review board finds that the person has not been operating a repair shop without being registered, any civil penalty which has been paid shall be refunded, any premises ordered to be sealed pursuant to subdivision five-a of this section shall be unsealed, and if such board determines that registration as a repair shop is not required and a registration has been obtained to avoid the civil penalty assessed, the registration shall be cancelled and, notwithstanding the provisions of paragraph (a) of subdivision three of section three hundred ninety-eight-c of this chapter, all fees paid for such registration shall be refunded.

5. Civil penalties assessed under this section shall be paid to the commissioner for deposit into the state treasury, and unpaid civil penalties may be recovered by the commissioner in a civil action in the name of the commissioner. 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.

5-a. Sealing of the premises. (a) In addition to any other penalties set forth in this article, the commissioner, after notice to the owner of the premises and the owner of the motor vehicle repair shop and the opportunity for a hearing, shall be authorized to

(i) order the sealing of the premises upon which any person has operated a motor vehicle repair shop without being registered, provided that such premises is primarily used for such activity and provided, further, that the commissioner shall not seal any dwelling unit or other

space lawfully used solely for residential purposes;

(ii) order that any devices, items or goods utilized in the operation of a motor vehicle repair shop and relating to such activity for which a registration for operation is required but has not been obtained pursuant to the provisions of this article shall be removed, sealed or otherwise made inoperable; and

(iii) order the removal of motor vehicles on the premises to a garage, pound or other place of safety. For purposes of this article, the term "owner of the premises" shall mean the owner, lessor, lessee or mortgagee of the building, erection or place wherein any person is operating an unregistered motor vehicle repair shop. The person in whose name the real estate affected by the orders of the commissioner is recorded in the office of the city register or the county clerk, as the case may be, shall be presumed to be the owner thereof.

(b) The lack of knowledge of, acquiescence or participation in or responsibility for, the operation of an unregistered motor vehicle repair shop, on the part of the owner of the premises and/or the owner of the motor vehicle repair shop, shall not be a defense by such owners.

(c) Orders of the commissioner issued pursuant to paragraph (a) of this subdivision shall be conspicuously posted at the premises upon which unlawful operation occurred.

(d) An order of the commissioner issued pursuant to paragraph (a) of this subdivision shall be stayed with respect to any person who, prior to service of the notice required by such paragraph, has submitted a complete application, in proper form and accompanied by the requisite fee, for a certificate of registration to operate a motor vehicle repair shop or a renewal thereof, while the application is pending.

(e) Ten days after the posting of an order issued pursuant to paragraph (a) of this subdivision, and upon the written directive of the commissioner, officers and employees of the department and police officers of any appropriate law enforcement agency shall be authorized to act upon and enforce such order. The commissioner may take such steps as are lawful and necessary to prevent the removal from the premises of any devices, items, goods or personal property used in the conduct of a motor vehicle repair shop business during such ten day period.

(f) (i) Any devices, items, goods or motor vehicles removed pursuant to the provisions of subparagraphs (ii) and (iii) of paragraph (a) of

this subdivision shall be stored in a garage, pound or other place of safety and the owner or other person lawfully entitled to the possession of such devices, items, goods or motor vehicles may be charged with reasonable costs for removal and storage payable prior to the release of such devices, items, goods or motor vehicles to such owner or such other person.

(ii) The commissioner shall, by first class mail, notify the registered owner of any motor vehicle removed pursuant to subparagraph (iii) of paragraph (a) of this subdivision within five business days of the removal, of the location of such motor vehicle and the actions necessary to recover such motor vehicle.

(iii) The owner or other person lawfully entitled to reclaim the devices, items, goods or motor vehicles removed pursuant to this section shall reclaim such devices, items, goods or motor vehicles within ninety days of their removal, or such devices, items, goods or motor vehicles shall be subject to forfeiture upon notice and judicial determination in accordance with the provisions of law. Upon forfeiture the commissioner shall, upon a public notice of at least five days, sell such forfeited devices, items, goods or motor vehicles at public sale. The net proceeds of such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund.

(iv) Lessors of devices, items, goods or personal property removed pursuant to the provisions of subparagraph (ii) of paragraph (a) of this subdivision may reclaim leased devices, items, goods or personal property upon presentment of proof that the lessor is not otherwise involved, directly or indirectly, in the ownership or operation of such motor vehicle repair shop and that the lessee is in breach of the lease or in default of payments, and upon payment of any reasonable costs imposed for the removal and storage of such devices, items, goods or personal property pursuant to this subdivision.

(g) The commissioner shall order any premises which are sealed pursuant to paragraph (a) of this subdivision to be unsealed upon:

(i) payment of any and all fines, penalties and restitution; and

(ii) presentment of proof that the required registration has been obtained for operation of a motor vehicle repair shop on the premises, or proof satisfactory to the commissioner, submitted by the owner of the premises, that such premises will not be used in violation of this

article.

(h) In addition to any fines, penalties or actions taken with respect to a motor vehicle repair shop and the persons operating, providing equipment or otherwise involved in the operations of such shop, the commissioner may also take action with respect to the owner of the premises where such shop has operated or is operating as provided in this paragraph. Upon a finding by the commissioner, after notice and the opportunity for a hearing, that an unregistered motor vehicle repair shop has been operated at the same premises on two or more separate occasions within eighteen months resulting in two or more separate determinations by the commissioner of a violation of this section with respect to such premises, and that the owner of the premises knowingly allowed such operation, the commissioner may impose upon such owner of the premises a civil penalty in an amount not to exceed fifteen thousand dollars, or may order the sealing of the premises for not more than one hundred eighty days, or both such actions.

(i) Nothing contained herein shall be construed to authorize the commissioner to execute an order issued pursuant to this subdivision without the presence and assistance of a police officer of an appropriate law enforcement agency.

(j) Removal of the seal on any premises sealed pursuant to the provisions of this subdivision shall constitute a misdemeanor.

6. No allegation of unregistered operation as a repair shop shall be heard or determined unless notice of such allegation has been mailed to such person within two years after the date of the alleged unregistered operation.