

AMENDED IN ASSEMBLY AUGUST 20, 2010

AMENDED IN ASSEMBLY AUGUST 9, 2010

AMENDED IN ASSEMBLY MAY 20, 2010

AMENDED IN ASSEMBLY JUNE 22, 2009

AMENDED IN SENATE JUNE 1, 2009

AMENDED IN SENATE APRIL 23, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 427

Introduced by Senator Negrete McLeod

February 26, 2009

An act to amend Sections 9875, 9880.1, 9884.8, 9884.9, and 9889.20 of, and to add Section 9884.76 to, the Business and Professions Code, relating to automotive repair.

LEGISLATIVE COUNSEL'S DIGEST

SB 427, as amended, Negrete McLeod. Automotive repair: crash parts.

Existing law, the Automotive Repair Act, establishes the Bureau of Automotive Repair under the supervision and control of the Director of Consumer Affairs. The act provides for the registration and regulation of automotive repair dealers and authorizes the director to adopt regulations to implement its provisions. The act requires all work done by an automotive repair dealer to be recorded on an invoice that describes all service work done and parts supplied. The act requires the invoice to include a statement indicating whether any crash parts are original equipment manufacturer crash parts or nonoriginal equipment

manufacturer aftermarket crash parts. The act also requires this information to be provided to a customer in an itemized written estimate when an automotive repair dealer is doing auto body or collision repairs. Existing law requires the automotive repair dealer to obtain authorization from the customer before performing work and imposing charges. A violation of the act is a crime.

Existing law governing motor vehicle replacement parts prohibits an insurer from requiring the use of specified parts in the repair of an insured's motor vehicle unless certain requirements have been met.

This bill would define and redefine "crash part," "aftermarket crash part," and "original equipment manufacturer crash part," for purposes of the act as well as the motor vehicle replacement part provisions.

The bill would specify that an automotive repair dealer who prepares a written estimate that includes replacement of a deployed airbag and who fails to repair and fully restore the airbag *where the consumer has paid for the repair*, as specified, is guilty of a misdemeanor punishable by a fine, imprisonment, or both.

The bill would require the invoice for work done by an automotive repair dealer to describe all service work done, parts supplied, and crash parts installed. The bill would make a statement of legislative intent regarding this requirement.

Because a violation of the bill's provisions would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 9875 of the Business and Professions
- 2 Code is amended to read:
- 3 9875. As used in this chapter, the following definitions shall
- 4 apply:
- 5 (a) "Insurer" includes an insurance company and any person
- 6 authorized to represent the insurer with respect to a claim.

(b) "Crash part" means any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels and exterior lighting; ~~and shall also include the airbag in a motor vehicle's inflatable restraint system.~~

(c) "Aftermarket crash part" means a replacement for any crash part.

(d) "Nonoriginal equipment manufacturer aftermarket crash part" means aftermarket crash parts not made for or by the manufacturer of the motor vehicle.

Nothing in this section shall be construed to apply to the installation of light bulbs in a motor vehicle.

SEC. 2. Section 9880.1 of the Business and Professions Code is amended to read:

9880.1. The following definitions apply for the purposes of this chapter:

(a) "Automotive repair dealer" means a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles.

(b) "Chief" means the Chief of the Bureau of Automotive Repair.

(c) "Bureau" means the Bureau of Automotive Repair.

(d) "Motor vehicle" means a passenger vehicle required to be registered with the Department of Motor Vehicles and all motorcycles whether or not required to be registered by the Department of Motor Vehicles.

(e) "Repair of motor vehicles" means all maintenance of and repairs to motor vehicles performed by an automotive repair dealer including automotive body repair work, but excluding those repairs made pursuant to a commercial business agreement and also excluding repairing tires, changing tires, lubricating vehicles, installing light bulbs, batteries, windshield wiper blades and other minor accessories, cleaning, adjusting, and replacing spark plugs, replacing fan belts, oil, and air filters, and other minor services, which the director, by regulation, determines are customarily performed by gasoline service stations.

No service shall be designated as minor, for purposes of this section, if the director finds that performance of the service requires mechanical expertise, has given rise to a high incidence of fraud

1 or deceptive practices, or involves a part of the vehicle essential
2 to its safe operation.

3 (f) “Person” includes firm, partnership, association, limited
4 liability company, or corporation.

5 (g) An “automotive technician” is an employee of an automotive
6 repair dealer or is that dealer, if the employer or dealer repairs
7 motor vehicles and who for salary or wage performs maintenance,
8 diagnostics, repair, removal, or installation of any integral
9 component parts of an engine, driveline, chassis or body of any
10 vehicle, but excluding repairing tires, changing tires, lubricating
11 vehicles, installing light bulbs, batteries, windshield wiper blades,
12 and other minor accessories; cleaning, replacing fan belts, oil and
13 air filters; and other minor services which the director, by
14 regulation, determines are customarily performed by a gasoline
15 service station.

16 (h) “Director” means the Director of Consumer Affairs.

17 (i) “Commercial business agreement” means an agreement,
18 whether in writing or oral, entered into between a business or
19 commercial enterprise and an automobile repair dealer, prior to
20 the repair which is requested being made, which agreement
21 contemplates a continuing business arrangement under which the
22 automobile repair dealer is to repair any vehicle covered by the
23 agreement, but does not mean any warranty or extended service
24 agreement normally given by an automobile repair facility to its
25 customers.

26 (j) “Customer” means the person presenting a motor vehicle for
27 repair and authorizing the repairs to that motor vehicle. “Customer”
28 shall not mean the automotive repair dealer providing the repair
29 services or an insurer involved in a claim that includes the motor
30 vehicle being repaired or an employee or agent or a person acting
31 on behalf of the dealer or insurer.

32 (k) “Crash part” shall have the same meaning as in Section
33 9875.

34 (l) “Aftermarket crash part” shall have the same meaning as
35 in Section 9875.

36 (m) “Original equipment manufacturer crash part” means a
37 crash part made for or by the original vehicle manufacturer that
38 manufactured, fabricated or supplied a vehicle or a component
39 part.

1 (n) “Nonoriginal equipment manufacturer aftermarket crash
2 part” shall have the same meaning as in Section 9875.

3 ~~SEC. 2.~~

4 SEC. 3. Section 9884.76 is added to the Business and
5 Professions Code, to read:

6 9884.76. Notwithstanding Section 9889.20, an automotive
7 repair dealer who prepares a written estimate for repairs pursuant
8 to Section 9884.9 that includes replacement of a deployed airbag
9 that is part of an inflatable restraint system and who fails to repair
10 and fully restore the airbag to original operating condition *where*
11 *the customer has paid for the airbag repair as provided in the*
12 *estimate* is guilty of a misdemeanor punishable by a fine of five
13 thousand dollars (\$5,000) or by imprisonment in the county jail
14 for one year or by both that fine and imprisonment.

15 ~~SEC. 3.~~

16 SEC. 4. Section 9884.8 of the Business and Professions Code
17 is amended to read:

18 9884.8. All work done by an automotive repair dealer, including
19 all warranty work, shall be recorded on an invoice and shall
20 describe all service work done, parts supplied, and crash parts
21 installed. Service work and parts shall be listed separately on the
22 repair invoice, which shall also state separately the subtotal prices
23 for service work and for parts, not including sales tax, and shall
24 state separately the sales tax, if any, applicable to each. If any used,
25 rebuilt, or reconditioned parts are installed, the invoice shall clearly
26 state that fact. If a part of a component system is composed of new
27 and used, rebuilt or reconditioned parts, that invoice shall clearly
28 state that fact. The invoice shall include a statement indicating
29 whether any crash parts are original equipment manufacturer crash
30 parts or nonoriginal equipment manufacturer aftermarket crash
31 parts. One copy of the invoice shall be given to the customer and
32 one copy shall be retained by the automotive repair dealer.

33 ~~SEC. 4.~~

34 SEC. 5. Section 9884.9 of the Business and Professions Code
35 is amended to read:

36 9884.9. (a) The automotive repair dealer shall give to the
37 customer a written estimated price for labor and parts necessary
38 for a specific job. No work shall be done and no charges shall
39 accrue before authorization to proceed is obtained from the
40 customer. No charge shall be made for work done or parts installed

1 in excess of the estimated price without the oral or written consent
2 of the customer that shall be obtained at some time after it is
3 determined that the estimated price is insufficient and before the
4 work not estimated is done or the parts not estimated are installed.
5 Written consent or authorization for an increase in the original
6 estimated price may be provided by electronic mail or facsimile
7 transmission from the customer. The bureau may specify in
8 regulation the procedures to be followed by an automotive repair
9 dealer if an authorization or consent for an increase in the original
10 estimated price is provided by electronic mail or facsimile
11 transmission. If that consent is oral, the dealer shall make a notation
12 on the work order of the date, time, name of person authorizing
13 the additional repairs, and telephone number called, if any, together
14 with a specification of the additional parts and labor and the total
15 additional cost, and shall do either of the following:

16 (1) Make a notation on the repair invoice of the same facts set
17 forth in the notation on the work order.

18 (2) Upon completion of the repairs, obtain the customer's
19 signature or initials to an acknowledgment of notice and consent,
20 if there is an oral consent of the customer to additional repairs, in
21 the following language:

22
23 "I acknowledge notice and oral approval of an increase in the
24 original estimated price.

25
26 _____
27 (signature or initials)"

28 Nothing in this section shall be construed as requiring an
29 automotive repair dealer to give a written estimated price if the
30 dealer does not agree to perform the requested repair.

31 (b) The automotive repair dealer shall include with the written
32 estimated price a statement of any automotive repair service that,
33 if required to be done, will be done by someone other than the
34 dealer or his or her employees. No service shall be done by anyone
35 other than the dealer or his or her employees without the consent
36 of the customer, unless the customer cannot reasonably be notified.
37 The dealer shall be responsible, in any case, for any service in the
38 same manner as if the dealer or his or her employees had done the
39 service.

(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto body or collision repairs, shall provide an itemized written estimate for all parts and labor to the customer. The written estimate shall describe labor and parts separately and shall identify each part, indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part shall be identified on the written estimate and the written estimate shall indicate whether the crash part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer aftermarket crash part.

(d) A customer may designate another person to authorize work or parts supplied in excess of the estimated price, if the designation is made in writing at the time that the initial authorization to proceed is signed by the customer. The bureau may specify in regulation the form and content of a designation and the procedures to be followed by the automotive repair dealer in recording the designation. For the purposes of this section, a designee shall not be the automotive repair dealer providing repair services or an insurer involved in a claim that includes the motor vehicle being repaired, or an employee or agent or a person acting on behalf of the dealer or insurer.

~~SEC. 5.~~

SEC. 6. Section 9889.20 of the Business and Professions Code is amended to read:

9889.20. Except as otherwise provided in Sections 9884.76 and 9889.21, any person who fails to comply in any respect with the provisions of this chapter is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment not exceeding six months, or by both that fine and imprisonment.

SEC. 7. *The amendments made by this act to Section 9884.8 of the Business and Professions Code shall not be construed to require the replacement of the official automotive repair dealer sign as described in Section 3351.4 of Title 16 of the California Code of Regulations. It is the intent of the Legislature that instead of a replacement sign that another method be employed in order that the official sign shall accurately reflect the requirements of Section 9884.8 of the Business and Professions Code as amended by this act.*

1 ~~SEC. 6.~~

2 *SEC. 8.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.