

Introduced by Senator YeeFebruary 24, 2012

An act to amend Sections 9880.1, 9884.8, and 9884.9 of, and to repeal and add Sections 9875, 9875.1, and 9875.2 of, the Business and Professions Code, relating to automotive repair.

LEGISLATIVE COUNSEL'S DIGEST

SB 1460, as introduced, Yee. Automotive repair: replacement parts.

Existing law, the Automotive Repair Act, establishes the Bureau of Automotive Repair under the supervision and control of the Director of Consumer Affairs. Existing law provides that a person who fails to comply with the act is guilty of a misdemeanor punishable by a fine not exceeding \$1,000, by imprisonment not exceeding 6 months, or by both that fine and imprisonment, except as defined.

Existing law prohibits an insurer from requiring the use of nonoriginal equipment or aftermarket replacement parts for repairs on an insured's automobile unless the insured has been given advance notice of the use of these parts in the repair estimate as well as information on the warranty applicable to these replacement parts.

This bill would require an automotive repair dealer or insurer who uses or directs the use of replacement crash parts, as defined, to follow specified procedures when using replacement crash parts, to expressly notify the automobile owner regarding the use of specific categories of crash parts in making the repairs, and to provide disclosures as to the warranty for those parts, as specified.

Because this bill would create a new crime, the bill would create 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2 Code is repealed.

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.~~

7 ~~(b) “Aftermarket crash part” means a replacement for any of~~
8 ~~the nonmechanical sheet metal or plastic parts which generally~~
9 ~~constitute the exterior of a motor vehicle, including inner and outer~~
10 ~~panels.~~

11 ~~(c) “Nonoriginal equipment manufacturer (Non-OEM)~~
12 ~~aftermarket crash part” means aftermarket crash parts not made~~
13 ~~for or by the manufacturer of the motor vehicle.~~

14 SEC. 2. Section 9875 is added to the Business and Professions
15 Code, to read:

16 9875. As used in this chapter, the following definitions shall
17 apply:

18 (a) “Auto body repair shop” has the meaning specified in Section
19 9889.51.

20 (b) “Certified new non-OEM crash part” means a new non-OEM
21 replacement crash part that:

22 (1) Has been certified by an American National Standards
23 Institute (ANSI) accredited standards developer that develops and
24 maintains a consensus of quality standards for competitive crash
25 repair parts.

26 (2) Is identified by a unique serial number or production lot
27 number that enables full traceability through the certifying entity.

28 (c) “Replacement crash part” means any nonmechanical part
29 made of sheet metal, aluminum, plastic, fiberglass, or a similar
30 material that is generally used in the repair of a crashed vehicle.

1 This includes outer panels, hoods, fenders, doors, trunk lids,
2 bumper parts (excluding bumper covers), and radiator supports,
3 but does not include glass, wheel covers, or grilles.

4 (d) “Insurer” means an insurance company or any person
5 authorized to represent the insurer with respect to a claim.

6 (e) “New non-OEM crash part” means a replacement crash part
7 manufactured or sold by an entity other than the OEM.

8 (f) “Original equipment manufacturer (OEM) crash part” means
9 a replacement crash part manufactured or commissioned by a car
10 company, under its own name, for motor vehicles that the car
11 company manufactures or distributes under its own name.

12 (g) “Recycled crash part” means a crash part removed from a
13 vehicle.

14 (h) “Remanufactured or reconditioned crash part” means a
15 recycled crash part that has been refurbished or restored to its
16 original condition or appearance for use on another vehicle.

17 SEC. 3. Section 9875.1 of the Business and Professions Code
18 is repealed.

19 ~~9875.1. No insurer shall require the use of nonoriginal
20 equipment manufacturer aftermarket crash parts in the repair of
21 an insured’s motor vehicle, unless the consumer is advised in a
22 written estimate of the use of nonoriginal equipment manufacturer
23 aftermarket crash parts before repairs are made. In all instances
24 where nonoriginal equipment manufacturer aftermarket crash parts
25 are intended for use by an insurer:~~

26 ~~(a) The written estimate shall clearly identify each such part
27 with the name of its nonoriginal equipment manufacturer or
28 distributor.~~

29 ~~(b) A disclosure document containing the following information
30 in 10-point type or larger type shall be attached to the insured’s
31 copy of the estimate: “This estimate has been prepared based on
32 the use of crash parts supplied by a source other than the
33 manufacturer of your motor vehicle. Any warranties applicable to
34 these replacement parts are provided by the manufacturer or
35 distributor of the parts, rather than by the original manufacturer
36 of your vehicle.”~~

37 SEC. 4. Section 9875.1 is added to the Business and Professions
38 Code, to read:

39 9875.1. (a) Replacement crash parts that are recycled,
40 remanufactured, or reconditioned OEM, new non-OEM, or certified

1 new non-OEM crash parts shall not be used in determining the
2 amount to be paid by the insurer for the repair of a motor vehicle
3 unless both of the following conditions are met:

4 (1) The insurer discloses in writing, either in policy language
5 or in a separate notification, that the insurer may use parts other
6 than OEM crash parts to determine the amount to be paid to repair
7 a damaged motor vehicle in a manner sufficient to restore the
8 vehicle to its preloss condition.

9 (2) The auto body repair shop discloses whether the replacement
10 crash part to be used in the repair is any of the following:

11 (A) A recycled, remanufactured, or reconditioned OEM or
12 certified new non-OEM crash part.

13 (B) An OEM crash part.

14 (C) A certified new non-OEM crash part.

15 (b) Certified new non-OEM crash parts shall be presumed
16 sufficient to return the motor vehicle to its preloss condition.

17 (c) A violation of this section shall be enforced by the penalties
18 provided in Section 790.06 of the Insurance Code.

19 SEC. 5. Section 9875.2 of the Business and Professions Code
20 is repealed.

21 ~~9875.2. Any violation of this chapter shall be enforced by the~~
22 ~~penalties provided in Section 790.06 of the Insurance Code.~~

23 SEC. 6. Section 9875.2 is added to the Business and Professions
24 Code, to read:

25 9875.2. A supplier who supplies a certified new non-OEM
26 crash part shall do all of the following:

27 (a) Provide a written consumer warranty that equals or exceeds
28 the warranty provided by the car company for the type of OEM
29 crash part.

30 (b) Utilize an electronic tracking system that tracks the
31 manufacturer part number, lot number, and repair shop license
32 number for recall purposes.

33 (c) Analyze any crash part returned as defective and report the
34 defective part number, lot number, and nature of the defect to the
35 manufacturer and to the certifying entity.

36 (d) Report annually to the Bureau of Automotive Repair defect
37 rates greater than 5 percent for certified new non-OEM crash parts
38 installed in 1,000 or more vehicles.

1 (e) Provide the auto body repair shop with a service guarantee
2 on any defective certified new non-OEM crash part which includes
3 a full refund within 60 days.

4 SEC. 7. Section 9880.1 of the Business and Professions Code
5 is amended to read:

6 9880.1. The following definitions apply for the purposes of
7 this chapter:

8 (a) “Automotive repair dealer” means a person who, for
9 compensation, engages in the business of repairing or diagnosing
10 malfunctions of motor vehicles, *including an auto body repair*
11 *shop as defined in Section 9889.51.*

12 (b) “Chief” means the Chief of the Bureau of Automotive
13 Repair.

14 (c) “Bureau” means the Bureau of Automotive Repair.

15 (d) “Motor vehicle” means a passenger vehicle required to be
16 registered with the Department of Motor Vehicles and all
17 motorcycles whether or not required to be registered by the
18 Department of Motor Vehicles.

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

29 No service shall be designated as minor, for purposes of this
30 section, if the director finds that performance of the service requires
31 mechanical expertise, has given rise to a high incidence of fraud
32 or deceptive practices, or involves a part of the vehicle essential
33 to its safe operation.

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

36 (g) An “automotive technician” is an employee of an automotive
37 repair dealer or is that dealer, if the employer or dealer repairs
38 motor vehicles and who for salary or wage performs maintenance,
39 diagnostics, repair, removal, or installation of any integral
40 component parts of an engine, driveline, chassis or body of any

1 vehicle, but excluding repairing tires, changing tires, lubricating
2 vehicles, installing light bulbs, batteries, windshield wiper blades,
3 and other minor accessories; cleaning, replacing fan belts, oil and
4 air filters; and other minor services which the director, by
5 regulation, determines are customarily performed by a gasoline
6 service station.

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

8 (i) “Commercial business agreement” means an agreement,
9 whether in writing or oral, entered into between a business or
10 commercial enterprise and an automobile repair dealer, prior to
11 the repair which is requested being made, which agreement
12 contemplates a continuing business arrangement under which the
13 automobile repair dealer is to repair any vehicle covered by the
14 agreement, but does not mean any warranty or extended service
15 agreement normally given by an automobile repair facility to its
16 customers.

17 (j) “Customer” means the person presenting a motor vehicle for
18 repair and authorizing the repairs to that motor vehicle. “Customer”
19 shall not mean the automotive repair dealer providing the repair
20 services or an insurer involved in a claim that includes the motor
21 vehicle being repaired or an employee or agent or a person acting
22 on behalf of the dealer or insurer.

23 (k) *The definitions set forth in Section 9875 apply to this chapter.*

24 SEC. 8. Section 9884.8 of the Business and Professions Code
25 is amended to read:

26 9884.8. (a) All work done by an automotive repair dealer,
27 including all warranty work, shall be recorded on an invoice and
28 shall describe all service work done and parts ~~supplied~~ *installed*.
29 Service work and parts shall be listed separately on the *final*
30 invoice, which shall also state separately the subtotal prices for
31 service work and for parts, not including sales tax, and shall state
32 separately the sales tax, if any, applicable to each. ~~If~~

33 (b) *The final invoice shall clearly state whether any used, rebuilt,*
34 *or reconditioned parts are supplied, the invoice shall clearly state*
35 *that fact installed.* If a part of a component system is composed of
36 new and used, rebuilt or reconditioned parts, that *final* invoice
37 shall clearly state that fact. ~~The~~

38 (c) *The final invoice shall include a statement indicating whether*
39 *any itemize each replacement crash parts are original equipment*
40 *manufacturer crash parts or nonoriginal equipment manufacturer*

1 ~~aftermarket crash parts~~ *part as an OEM, new non-OEM, certified*
2 *new non-OEM, recycled, remanufactured, or reconditioned crash*
3 *part.* ~~One~~

4 (d) *The final invoice shall identify the supplier providing the*
5 *warranty for each certified new non-OEM crash part, and the*
6 *tracking information. One copy of the final invoice shall be given*
7 *provided to the customer and one copy shall be retained by the*
8 *automotive repair dealer.*

9 (e) *The final invoice shall include the disclosure language set*
10 *forth in subdivision (c) of Section 9884.9.*

11 (f) *Upon installation of a certified new non-OEM crash part,*
12 *the automotive repair dealer shall transfer the unique identification*
13 *information to the final invoice for tracking purposes.*

14 (g) *Upon installation of a certified new non-OEM crash part,*
15 *the automotive repair dealer shall transmit the tracking information*
16 *to the certifying entity in the form provided by the certifying entity*
17 *of the replacement crash part to enable traceability.*

18 SEC. 9. Section 9884.9 of the Business and Professions Code
19 is amended to read:

20 9884.9. (a) ~~The automotive repair dealer shall give provide~~ *to*
21 *the customer a written an estimated price for labor and parts*
22 *necessary for a specific job in the form of a written estimate. No*
23 *work shall be done and no charges shall accrue before authorization*
24 *to proceed is obtained from the customer. No charge shall be made*
25 *for work done or parts supplied installed in excess of the estimated*
26 *price without the oral or written consent of the customer that shall*
27 *be obtained at some time after it is determined that the estimated*
28 *price is insufficient and before the work not estimated is done or*
29 *the parts not estimated are supplied installed. Written consent or*
30 *authorization for an increase in the original estimated price may*
31 *be provided by electronic mail or facsimile transmission from the*
32 *customer. The bureau may specify in regulation the procedures to*
33 *be followed by an automotive repair dealer if an authorization or*
34 *consent for an increase in the original estimated price is provided*
35 *by electronic mail or facsimile transmission. If that consent is oral,*
36 *the dealer shall make a notation on the work order of the date,*
37 *time, name of person authorizing the additional repairs, and*
38 *telephone number called, if any, together with a specification of*
39 *the additional parts and labor and the total additional cost, and*
40 *shall do either of the following:*

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

3 (2) Upon completion of the repairs, obtain the customer’s
4 signature or initials to an acknowledgment of notice and consent,
5 if there is an oral consent of the customer to additional repairs, in
6 the following language:

7
8 “I acknowledge notice and oral approval of an increase in the original
9 estimated price.

10 _____
11 (signature or initials)”
12

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

16 (b) The automotive repair dealer shall include with the written
17 estimated price a statement of any automotive repair service that,
18 if required to be done, will be done by someone other than the
19 dealer or his or her employees. No service shall be done by other
20 than the dealer or his or her employees without the consent of the
21 customer, unless the customer cannot reasonably be notified. The
22 dealer shall be responsible, in any case, for any service in the same
23 manner as if the dealer or his or her employees had done the
24 service.

25 (c) In addition to subdivisions (a) and (b), an automotive repair
26 dealer, when doing auto body or collision repairs, shall provide
27 an itemized written estimate for all parts and labor to the customer.
28 The estimate shall ~~describe~~ contain all of the following:

29 (1) A description of labor and parts separately ~~and shall identify.~~

30 (2) An identification of each part, indicating whether the
31 replacement part is new, used, rebuilt, or reconditioned. ~~Each crash
32 part shall be identified~~

33 (3) An identification on the written estimate ~~and the written~~
34 estimate shall ~~indicate~~ indicating whether the replacement crash
35 part is an ~~original equipment manufacturer crash part or a~~
36 ~~nonoriginal equipment manufacturer aftermarket crash part~~ OEM,
37 certified new non-OEM, new non-OEM, recycled, remanufactured,
38 or reconditioned crash part.

39 (4) A disclosure of the replacement crash part warranty
40 provided by the supplier.

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

12 SEC. 10. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.