

AMENDED IN SENATE APRIL 17, 2012

**SENATE BILL**

**No. 1460**

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**Introduced by Senator Yee**

*(Coauthors: Assembly Members Hagman and Perea)*

February 24, 2012

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An act to amend Sections 9880.1, 9884.8, and 9884.9 of, *to add Section 9880.15 to*, and to repeal and add Sections 9875; *and 9875.1;* ~~and 9875.2~~ of, the Business and Professions Code, relating to automotive repair.

LEGISLATIVE COUNSEL'S DIGEST

SB 1460, as amended, 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2 Code is repealed.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 SEC. 2. Section 9875 is added to the Business and Professions  
4 Code, to read:

5 9875. As used in this chapter, the following definitions shall  
6 apply:

7 (a) “Auto body repair shop” has the meaning specified in Section  
8 9889.51.

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

11 (1) Has been certified by an American National Standards  
12 Institute (ANSI) accredited standards developer that develops and  
13 maintains a consensus of quality standards for competitive crash  
14 repair parts.

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

17 (3) *Has a manufacturer’s warranty that meets or exceeds the*  
18 *original equipment manufacturer’s warranty for the applicable*  
19 *original equipment manufacturer (OEM) crash part as defined in*  
20 *subdivision (f).*

21 (c) “Replacement crash part” means any nonmechanical part  
22 made of sheet metal, aluminum, plastic, fiberglass, or a similar  
23 material that is generally used in the repair of a crashed vehicle.  
24 This includes outer panels, hoods, fenders, doors, trunk lids,  
25 bumper parts (excluding bumper covers), and radiator supports,  
26 but does not include glass, wheel covers, or grilles.

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

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

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

7 (g) “Recycled crash part” means a crash part removed from a  
8 vehicle.

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

12 SEC. 3. Section 9875.1 of the Business and Professions Code  
13 is repealed.

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

16 9875.1. (a) Replacement crash parts that are recycled,  
17 remanufactured, or reconditioned OEM, ~~new non-OEM~~, or certified  
18 new non-OEM crash parts ~~shall not~~ *may* be used in determining  
19 the amount to be paid by the insurer for the repair of a motor  
20 vehicle ~~unless~~ *when* both of the following conditions are met:

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

26 (2) The auto body repair shop discloses *in writing* whether the  
27 replacement crash part to be used in the repair is any of the  
28 following:

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

31 (B) An OEM crash part.

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

33 (b) ~~Certified~~ *Use of a certified new non-OEM crash parts part,*  
34 *if installed and a reasonable fit,* shall be presumed sufficient to  
35 return the motor vehicle to its preloss condition.

36 ~~(e) A violation of this section shall be enforced by the penalties~~  
37 ~~provided in Section 790.06 of the Insurance Code.~~

38 (c) *The presumption in subdivision (b) shall not apply in any of*  
39 *the following circumstances:*

1 (1) *The certified new non-OEM crash part is installed on a*  
2 *motor vehicle that is subject to a lease with the original equipment*  
3 *manufacturer in which the lease contract requires damage to be*  
4 *repaired using only an original equipment manufacturer (OEM)*  
5 *crash part.*

6 (2) *The installation of which would permit the original*  
7 *equipment manufacturer to void its manufacturer's vehicle*  
8 *warranty under permission of a Federal Trade Commission waiver*  
9 *of the "tie-in sales" prohibition under the Magnuson-Moss*  
10 *Warranty Act of 1975 (15 U.S.C. Sec. 2301), which otherwise*  
11 *guarantees consumers the ability to elect either an original*  
12 *equipment manufacturer (OEM) crash part or a non-OEM*  
13 *replacement crash part to repair a vehicle.*

14 (3) *The vehicle to be repaired is less than one year old.*

15 ~~SEC. 5. Section 9875.2 of the Business and Professions Code~~  
16 ~~is repealed.~~

17 ~~SEC. 6. Section 9875.2 is added to the Business and Professions~~  
18 ~~Code, to read:~~

19 ~~9875.2. A supplier who supplies a certified new non-OEM~~  
20 ~~crash part shall do all of the following:~~

21 ~~(a) Provide a written consumer warranty that equals or exceeds~~  
22 ~~the warranty provided by the car company for the type of OEM~~  
23 ~~crash part.~~

24 ~~(b) Utilize an electronic tracking system that tracks the~~  
25 ~~manufacturer part number, lot number, and repair shop license~~  
26 ~~number for recall purposes.~~

27 ~~(c) Analyze any crash part returned as defective and report the~~  
28 ~~defective part number, lot number, and nature of the defect to the~~  
29 ~~manufacturer and to the certifying entity.~~

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

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

36 ~~SEC. 7.~~

37 ~~SEC. 5. Section 9880.1 of the Business and Professions Code~~  
38 ~~is amended to read:~~

39 ~~9880.1. The following definitions apply for the purposes of~~  
40 ~~this chapter:~~

1 (a) “Automotive repair dealer” means a person who, for  
2 compensation, engages in the business of repairing or diagnosing  
3 malfunctions of motor vehicles, including an auto body repair shop  
4 as defined in Section 9889.51.

5 (b) “Chief” means the Chief of the Bureau of Automotive  
6 Repair.

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

8 (d) “Motor vehicle” means a passenger vehicle required to be  
9 registered with the Department of Motor Vehicles and all  
10 motorcycles whether or not required to be registered by the  
11 Department of Motor Vehicles.

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

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

27 (f) “Person” includes *a* firm, partnership, association, limited  
28 liability company, or corporation.

29 (g) An “automotive technician” is an employee of an automotive  
30 repair dealer or is that dealer, if the employer or dealer repairs  
31 motor vehicles and who for salary or wage performs maintenance,  
32 diagnostics, repair, removal, or installation of any integral  
33 component parts of an engine, driveline, chassis or body of any  
34 vehicle, but excluding repairing tires, changing tires, lubricating  
35 vehicles, installing light bulbs, batteries, windshield wiper blades,  
36 and other minor accessories; cleaning, replacing fan belts, oil and  
37 air filters; and other minor services which the director, by  
38 regulation, determines are customarily performed by a gasoline  
39 service station.

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

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

10 (j) “Customer” means the person presenting a motor vehicle for  
 11 repair and authorizing the repairs to that motor vehicle. “Customer”  
 12 shall not mean the automotive repair dealer providing the repair  
 13 services or an insurer involved in a claim that includes the motor  
 14 vehicle being repaired or an employee or agent or a person acting  
 15 on behalf of the dealer or insurer.

16 (k) The definitions set forth in Section 9875 apply to this  
 17 chapter.

18 *SEC. 6. Section 9880.15 is added to the Business and*  
 19 *Professions Code, to read:*

20 *9880.15. A supplier who supplies a certified new non-OEM*  
 21 *crash part shall do all of the following:*

22 (a) *Provide a written consumer warranty that equals or exceeds*  
 23 *the warranty provided by the car company for the type of OEM*  
 24 *crash part.*

25 (b) *Utilize an electronic tracking system that tracks the*  
 26 *manufacturer part number, lot number, as described in subdivision*  
 27 *(b) of Section 9875, and repair shop license number for recall*  
 28 *purposes.*

29 (c) *Analyze any crash part returned as defective and report the*  
 30 *defective part number, lot number, and nature of the defect to the*  
 31 *manufacturer and to the certifying entity.*

32 (d) *Report annually to the bureau defect rates greater than 5*  
 33 *percent for certified new non-OEM crash parts installed in 1,000*  
 34 *or more vehicles.*

35 (e) *Provide the auto body repair shop with a service guarantee*  
 36 *on any defective certified new non-OEM crash part that includes*  
 37 *a full refund within 60 days.*

38 ~~SEC. 8.~~

39 *SEC. 7. Section 9884.8 of the Business and Professions Code*  
 40 *is amended to read:*

1 9884.8. (a) All work done by an automotive repair dealer,  
2 including all warranty work, shall be recorded on ~~an~~ *the final*  
3 invoice and shall describe all service work done and parts installed.  
4 Service work and parts shall be listed separately on the final  
5 invoice, which shall also state separately the subtotal prices for  
6 service work and for parts, not including sales tax, and shall state  
7 separately the sales tax, if any, applicable to each.

8 (b) The final invoice shall clearly state whether any used, rebuilt,  
9 or reconditioned parts are installed. If a part of a component system  
10 is composed of new and used, rebuilt or reconditioned parts, that  
11 final invoice shall clearly state that fact.

12 (c) The final invoice shall itemize each replacement crash part  
13 as an OEM, new non-OEM, certified new non-OEM, recycled,  
14 remanufactured, or reconditioned crash part.

15 (d) The final invoice shall identify the supplier providing the  
16 warranty for each certified new non-OEM crash part, and the  
17 tracking information. One copy of the final invoice shall be  
18 provided to the customer and one copy shall be retained by the  
19 automotive repair dealer.

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

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

25 (g) Upon installation of a certified new non-OEM crash part,  
26 the automotive repair dealer shall transmit the tracking information  
27 to the ~~certifying entity~~ *supplier* in the form provided by the  
28 ~~certifying entity~~ *supplier* of the replacement crash part to enable  
29 traceability.

30 ~~SEC. 9.~~

31 *SEC. 8.* Section 9884.9 of the Business and Professions Code  
32 is amended to read:

33 9884.9. (a) The automotive repair dealer shall provide to the  
34 customer an estimated price for labor and parts necessary for a  
35 specific job in the form of a written estimate. No work shall be  
36 done and no charges shall accrue before authorization to proceed  
37 is obtained from the customer. No charge shall be made for work  
38 done or parts installed in excess of the estimated price without the  
39 oral or written consent of the customer that shall be obtained at  
40 some time after it is determined that the estimated price is

1 insufficient and before the work not estimated is done or the parts  
 2 not estimated are installed. Written consent or authorization for  
 3 an increase in the original estimated price may be provided by  
 4 electronic mail or facsimile transmission from the customer. The  
 5 bureau may specify in regulation the procedures to be followed  
 6 by an automotive repair dealer if an authorization or consent for  
 7 an increase in the original estimated price is provided by electronic  
 8 mail or facsimile transmission. If that consent is oral, the dealer  
 9 shall make a notation on the work order of the date, time, name of  
 10 person authorizing the additional repairs, and telephone number  
 11 called, if any, together with a specification of the additional parts  
 12 and labor and the total additional cost, and shall do either of the  
 13 following:

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

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

20  
 21 "I acknowledge notice and oral approval of an increase in the original  
 22 estimated price.

23 \_\_\_\_\_  
 24 (signature or initials)"  
 25

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

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

38 (c) In addition to subdivisions (a) and (b), an automotive repair  
 39 dealer, when doing auto body or collision repairs, shall provide

1 an itemized written estimate for all parts and labor to the customer.

2 The estimate shall contain all of the following:

3 (1) A description of labor and parts separately.

4 (2) An identification of each part, indicating whether the  
5 replacement part is new, used, rebuilt, or reconditioned.

6 (3) An identification on the written estimate indicating whether  
7 the replacement crash part is an OEM, certified new non-OEM,  
8 new non-OEM, recycled, remanufactured, or reconditioned crash  
9 part.

10 (4) A disclosure of the replacement crash part warranty provided  
11 by the supplier.

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

23 ~~SEC. 10.~~

24 *SEC. 9.* No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section 17556 of  
30 the Government Code, or changes the definition of a crime within  
31 the meaning of Section 6 of Article XIII B of the California  
32 Constitution.

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