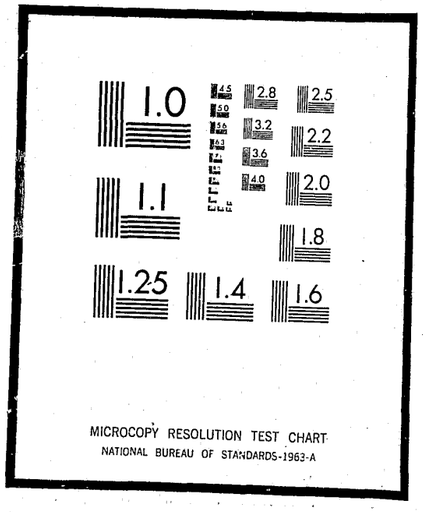

National Association of Attorneys General

Committee on the Office of Attorney General

LEGISLATION REGULATING AUTO REPAIR

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May, 1976

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CHAPTER 1. STATEMENT OF THE PROBLEM

A nationwide compilation of the "top twenty" consumer complaints received in 1971 through 1974 by state, county, and city government consumer offices showed that automobile complaints ranked first for each year.[1] While proposing a draft statute requiring the registration of automotive dealers, the Committee of State Officials on Suggested State Legislation stated in 1970 that:

> At a time of increased governmental interest in consumer protection and automobile safety, there is increasing evidence of nationwide dissatisfaction with the quality and cost of automobile repairs. Auto repairs and maintenance are costing the consumer an estimated $20 to $25 billion annually. Overcharging, needless repairs, and the necessity of having faulty work redone accounts for a high percentage of this cost.
>
> By taking advantage of apparent expertise, and lack of consumer knowledge, unscrupulous repairmen are able to deceive the unwary consumer. A further problem is the case of the untrained or unqualified repairman who, while honest, is incapable of performing skilled or even adequate work. Improper repairs are not only costly, they endanger the life of the consumer and his family.[2]

This report reviews some state responses to the problem.

Types of Automobile Repair Abuses

Consumers who need automobile repair service may encounter dishonest as well as incompetent repairmen. Most types of repair abuses can be attributed to either fraudulent practices or incompetence. Fraudulent practices in this area may take many forms. A Wisconsin survey of automobile repair practices revealed seven of the more common abuses which consumers face. These were:

1. Misleading advertising relying on "bait-and-switch" tactics. This technique usually involves advertising a low price for specific repairs and after the consumer is lured into the shop, attempting to sell more costly repairs or parts by downgrading the safety of the bargain service.

2. Fraudulent discounts and guarantees. This abuse manifests itself in instances where huge savings are offered without revealing the regular price and in the offering of worthless guarantees that provide no protection.

3. Inaccurate estimates. In some cases, after an initial estimate is given and repair work is begun, the dealer informs the customer that additional repairs are needed which substantially raise the cost. If the customer refuses to have the additional work done, he is told that he must

still pay the original price to have his car reassembled even though it will not have been repaired.

4. Unnecessary repairs. This typically befalls a customer who is . . . ignorant of mechanical matters and involves the replacement or "repair" of properly functioning parts.

5. Fraudulent charges. Closely related to the preceding ploy, this abuse involves charging for services not performed.

6. Selling used parts as new. While not necessarily representing used parts as new parts, the unethical dealer does not inform the customer that parts are used.

7. Method of compensating mechanics. Frequently, mechanics are paid a commission computed on the total cost of parts sold, thus creating an incentive to install as many parts as possible. Another practice, also antithetical to the best interests of the consumer, is the flat-rate price schedule which lists the time theoretically required for specific repair. Since the mechanic is paid according to the listed time and not the time actually spent on the repair, he is encouraged to work at top speed, which could potentially have an adverse effect on quality or safety.[3]

Although the forms of automotive repair abuse which can be attributed to mechanic incompetence are not as extensive as those caused by fraudulent practices, their effect on consumers is equally detrimental. Incompetent mechanics simply do not know what they are doing. This statement is substantiated by four independent investigations of automotive repair abuses by Ohio, Virginia, Wisconsin, and Michigan.

The Ohio investigation disclosed that, in addition to making unnecessary repairs, incompetent mechanics frequently performed repairs improperly. The report estimated that unnecessary and overpriced automobile repairs account for 10 percent to 33 percent of the total amount expended on automotive repairs.[4]

The 1974 Report of the Virginia Commission for Professional and Occupational Regulation expressed an incidental effect of incompetence. Improper or unworkmanlike repairs performed by unqualified or poorly trained repairmen not only caused a financial loss to consumers, but created real or potential safety hazards for motoring consumers.

The Wisconsin Governor's Council for Consumer Affairs conducted a 1974 survey of auto repair facilities in Green Bay.[5] A state-owned vehicle was taken to the State Diagnostic Center where it was examined by Motor Vehicle Division inspectors who found that both the right and left front tires needed to be balanced, but that the vehicle was in excellent mechanical shape in all other respects. A test driver took the car to randomly selected repair facilities and asked each to examine the auto. The facility was informed that the vehicle vibrated while running and that it seemed to pull to the right when driving. The test driver was vague as to what could be wrong and specifically asked the mechanic to examine the front end and

provide an estimate. Over a two-day period, the car was taken to sixteen repair facilities, using the same procedure at each establishment. At the conclusion of the survey, the automobile was returned to the State Diagnostic Center and reanalyzed specifically for any repair that had been diagnosed during the survey.

The results of the Green Bay survey mirror those found in the Ohio investigation in that, of the sixteen Green Bay auto repair shops surveyed, twelve, or 75 percent, recommended unnecessary repairs and two-thirds of the shops surveyed recommended wheel alignments. The price of the unneeded work ranged from $13.95 to $88.75. The survey was unable to determine with certainty that the unnecessary repairs were a result of fraud as opposed to incompetence. However, it makes little difference to the consumer whether he is the victim of a burglar or bungler.

Finally, a Michigan report, detailing a study of thirty-five new car dealers asked to repair a car with a simple defect, made the following finding:

> Of the 35 dealerships surveyed, more than 75 percent were either incompetent, dishonest, or both. In other words, nearly three out of four dealerships either could not find a defective spark plug wire, or found it and in addition sold unneeded repairs. Only eight dealerships, or less than 30 percent of the sample, discovered the defective wire, replaced it at a fair price, and sold no unnecessary repairs.[6]

The Detroit Testing Laboratory supervised the test of the dealerships. Its mechanics removed the graphite from one spark plug wire in the automobiles used and replaced it with a sliver of wood to insure non-conduction; consequently, the engines misfired. This defect was used because it is not unusual for the graphite to wear away in a spark plug wire. In addition, a competent mechanic, using typical diagnostic equipment, should easily be able to detect and correct this defect. The Michigan report noted the unnecessary work done by car dealers in addition to repairing the defect. All spark plugs in one car were replaced twice in the same week by two different service departments. Another car was given two major tune-ups.

Experiences of Attorneys General in this Problem Area

Attorneys General's offices frequently encounter many of the repair abuses described above. Some of these experiences have been reported to the Committee on the Office of Attorney General and featured in its Consumer Protection Newsletter. Repair abuses summarized in the Newsletter have included fraudulent charges, deceptive advertising, and unnecessary repairs. Examples of these are given below.

Fraudulent Charges. The New York Attorney General has encountered the fraudulent charges scheme. An imported car dealer had assessed a "miscellaneous shop supplies" charge amounting to about 4 percent of the

cost of labor up to a maximum of $5,000. Charges which totaled $3,200 over a two year-period were assessed whether or not any miscellaneous supplies were used. An assurance of discontinuance was obtained from the company that it would stop assessing the charge and would refund the charges to customers and pay costs.

A similar fraudulent charges tactic was used by a Chevrolet company in Maryland. The Attorney General's office charged that the firm had been listing a non-existent part number in various quantities to charge customers for overhead expenses. In a Cease and Desist Agreement, the company agreed to not only revise its parts and services billing procedures, but to place $5,000 in escrow for reimbursement to individuals and corporations who were charged for the non-existent part during the 1974 calendar year.

Deceptive Advertising. The Idaho Office of Attorney General has accepted an assurance of voluntary compliance that prohibits advertisements which leads customers of a foreign car dealer to believe that the company has factory-trained mechanics for a wide variety of foreign automobiles when, in fact, it did not have any mechanics so trained.

A tire company was enjoined from engaging in a similar scheme in Missouri. An injunction prohibited it from advertising an offer of professional auto repair service or that it employs "service specialists," unless its service is professional and actually done by service specialists.

In Pennsylvania the following practices of a local car dealer, were encountered by its Attorney General's office:

1. It charged for repairs that were unnecessary, unauthorized by the owners or not performed;

2. The company intentionally tampered with cars brought in for servicing so that they would need repairs; and

3. The company offered "free" services to attract customers and then either refused to provide those advertised services, charged for them or imposed previously undisclosed conditions on their receipt.

The Attorney General agreed to a consent petition that required the company to provide advertised services and give written estimates and get authorization for repairs costing more than $50. In addition, the dealer promised not to charge for work done in excess of 10 percent of the estimated price unless the customer's authorization is obtained prior to the repairs made. Further, the company agreed to return any car should the customer refuse to pay for unauthorized repairs.

Unnecessary Repairs. Vacationing motorists in South Dakota have been warned against the practice of gas station attendants faking the need for emergency repairs by creating the impression of boiling batteries, leaking

transmissions and fuel pumps, and smoking generators. Other service station attendants are reported to have slashed tires or fan belts to induce an emergency repair.

The Oregon Office of Attorney General entered an Assurance of Voluntary Compliance with a car dealer who negligently repaired an automobile and failed to disclose this fact when making further repairs. The firm was required to disclose to customers any material damage or unsafe operating condition caused by its negligent repairs, and it was prohibited from billing customers for any repairs caused by its negligence.

These examples show not only the variety of repair frauds, but the extent to which they are practiced. While there are many honest and competent mechanics, there are also many who perform unnecessary repairs, overcharge, or otherwise deceive the customers.

Mechanic's Liens

A consumer who feels that he has been cheated by a repairman might refuse to pay for the purported repair services. However, this approach exposes the consumer to the risk of losing his automobile, especially where mechanics are given a right to a creditor's lien on the automobile for the amount of repairs or services. Mechanic's liens normally authorize repair shops to legally retain possession of the automobile and eventually sell it at a public auction for the cost of repairs. It is not difficult to understand that, in the hands of an unscrupulous mechanic, these liens may induce consumers to acquiesce to the repairman's demands.[7]

Mechanic's liens raise constitutional issues from the standpoint of the consumer and the repairman. Of foremost concern to the consumer is that he not be denied his constitutional guarantee of procedural due process which generally requires notice and a judicial hearing prior to the sale to determine whether the lien is valid.[8] The United States Supreme Court recently held that ex parte prejudgment replevin statutes are unconstitutional.[9] This doctrine was followed by the California Court of Appeals in Quebec v. Bud's Auto Serv.,[10] where the state's garagemen's lien statute authorizing private foreclosure was held unconstitutional because it constituted a deprivation of property without notice or hearing. The court implied that mere retention of the automobile violated the owner's constitutional guarantees of due process.

The Quebec decision was subsequently qualified by the California Supreme Court in Adams v. Dept. of Motor Vehicles,[11] where it was held that the garagemen's lien statute was unconstitutional due to "state action" or state involvement in enforcement of the lien. The interim retention without prior notice and hearing, however, was not held unconstitutional.[12] Interim retention of the automobile nevertheless gives the mechanic an unnecessary advantage. A law review comment suggests that one method of offsetting that advantage, while protecting both the mechanic's and the customer's interest, would be to require release of the automobile upon the customer's posting a bond for the amount of repairs. As a result, the mechanic would be assured of payment for his services and the customer would have the use of his automobile.[13]

With respect to mechanics, the constitutional issue is substantive due process. For example, some states have enacted legislation providing that any repair shop which fails to register with the state is precluded from

asserting any liens for labor and parts or from instituting any action on a contract for recovery of the costs of repairs.[14] Such legislation may face the argument that such requirement impairs property rights created under a valid contract. The United States Supreme Court has held that valid contracts are "property" within the meaning of the due process clause and that contract rights are impaired within the meaning of the constitution whenever the right to enforce them by legal process is taken away or materially lessened.[15] In the automobile repair context, there are no reported decisions in which this issue is presented.

CHAPTER 2. COMMON LAW REMEDIES AND THEIR INHERENT PROBLEMS

There are two avenues of relief for consumers victimized by automotive repair facilities: (1) common law remedies; and (2) statutory remedies. This chapter examines the problems of proof encountered when common law theories are employed to seek relief. Statutory remedies are discussed in Chapter 4.

Common Law Remedies and Proof Standards

One of several common law remedies may be used by consumers to obtain redress for damages caused by dishonest and/or incompetent repair shops. These remedies are claims based on negligence,[16] breach of contract,[17] breach of express or implied warranties,[18] or fraud.[19] Recovery based on these theories, however, may be impaired because consumers have the burden of proving the essential elements of these claims. For example, recovery was allowed in Foy v. Ed Taussing, Inc., where a mechanic negligently failed to test drive an automobile on which he attempted to repair the accelerator. The accelerator stuck, causing an accident in which the plaintiff and her children were injured. The Louisiana Court of Appeals held in this case that the negligence theory required plaintiff prove the following: (a) negligent repairs; (b) establish a causal relationship between the negligent repairs and ensuing accident; and (c) that the proximate cause of the accident was negligence.[20]

The standard for proving negligent repairs has been held to be the "reasonable man" test, so plaintiffs must often obtain expert testimony by other mechanics who may be reluctant to testify against fellow repairmen.[21]

Morgan v. Mixon Motor Co.,[22] shows that a plaintiff seeking to prove proximate cause may face the defense of intervening or supervening causes. In this case the evidence concerning the cause of the defective brakes conflicted. The majority of the court awarded damages to the plaintiff on the ground that the defendant negligently adjusted and replaced the brake-drum of plaintiff's automobile. The dissent's position was that the sole cause of the brake failure could have been a brakefluid leak on the drum, which was discovered by an inspection of the car after the accident, and not attributable to the repair work.

Another defense, known as contributory negligence or assumption of the risk, also presents an obstacle to recovery by a plaintiff using the negligence theory. This defense precludes plaintiff's recovery in many states if it is successfully asserted.[23]

Breach of contract is another common law theory of recovery that may be asserted by consumers against unscrupulous repair shops. The major problem facing a plaintiff using this theory of recovery arises where the repair contract is ambiguously worded; as a result of the ambiguity, a court must determine the intention of the parties, since they will naturally allege different interpretations. An illustrative case is West Esplanade Shell Service, Inc. v. Breithoff,[24] where a mechanic was employed to restore to a "good running condition" the plaintiff's automobile, which had an exhaust

emission problem. The written contract specified a valve job and ring replacement, but these repairs failed to correct the problem. Plaintiff filed suit for breach of contract and the question raised was whether the contract called for only a valve job and replacement of the rings or for restoring the car to a "good running condition." The court stated that the principal reason for the specific repairs was to alleviate the exhaust emission problem and awarded judgment for the plaintiff.

Suits based on fraud or ceceit present a standard of proof problems for consumers similar to that found in contract actions. Here, the primary difficulty is to establish the requisite intent in the mind of the defendant. Repairmen may rebut the charge of fraud by claiming that the customer misunderstood the terms of the contract or the extent of repairs.[25]

This brief discussion of common law remedies makes it clear that common law actions for unworkmanlike or unnecessary repairs offer no guarantee of success because of proof standards that require plaintiffs to establish essential elements of a claim. In addition, cases where consumers have successfully asserted common law theories frequently involved personal injury in addition to property damage.[26] Another deterrent to filing private civil actions is that the attorneys' fees are too high to make most suits worthwhile.[27] The major effect of the above consideration is to discourage consumers from actively pursuing common law remedies.

The inadequacy of common law remedies has compelled consumers to seek alternative remedies, such as statutory measures specifically drafted to protect consumers from unscrupulous mechanics. These are discussed in this report along with the problems involved in securing enactment of such legislation.

CHAPTER 3. INDUSTRY RESPONSES TO THE PROBLEM

Industry-sponsored programs have been developed in order to curb automotive repair abuses and to provide an alternative to state regulation of automotive repair transactions. The existence of these programs may be cited by industry as a reason for opposition to state legislation regulating automotive repair services. This chapter discusses industry-sponsored programs and examines reasons for industry opposition to state regulation of the automotive repair industry.

Programs Sponsored by Industry

As the need for government regulation of the autmobile repair industry became more likely due to the increased number of documented abuses,[28] the automobile industry recognized that incompetent or dishonest repairmen undermine public confidence in the entire industry, and responded by establishing self-regulated programs. The basic industry approaches toward self-regulation were classified by a recent study as: (1) voluntary certification of mechanics; (2) automobile consumer action panels (Auto-Caps); and (3) a licensing recommendation including a "Code of Responsible Service Practices."[29]

The Educational Testing Service of Princeton, New Jersey developed a testing program for the National Institute for Automotive Service Excellence (NIASE). NIASE offers written tests and certifications in eight areas of automobile repair. The objective of the tests is to measure the knowledge and skills that automotive experts believe a mechanic must have in order to repair complex automobiles. Areas tested are: (1) engine repair; (2) automotive transmission; (3) manual transmission and rear axle; (4) front end; (5) brakes; (6) electrical systems; (7) heating and air conditioning; and (8) engine tune-up. The tests are administered by NIASE officials in cities across the nation. When an applicant successfully completes the written tests, he receives a certificate which is valid for five and one-half years. To remain certified, mechanics must take a new test after that time.

Since the establishment of the Institute in June, 1972, approximately 82,000 mechanics have been certified. According to one official of the NIASE, approximately one half of the nation's 470,000 mechanics are test-ready. The Institute publishes a directory titled, Where to Find Certified Mechanics for Your Car. This directory lists the names, addresses, and telephone numbers of establishments that employ certified mechanics. However, the names of the mechanics are not listed.[30]

The NIASE certification program has not escaped criticism. Critics charge that the written tests cannot accurately reflect a mechanic's ability to repair automobiles, because they fail to include practical applications of mechanical knowledge.[31] In addition, the Consumer Federation of America (CFA), an organization that includes national and state consumer groups, questioned the accuracy of preliminary statistics released by NIASE concerning the number of mechanics who passed one or more tests. For instance, CFA states that the Institute's claim that 75 percent of those

taking the tests passed one or more is meaningless because it does not indicate the actual number of tests taken by each mechanic.[32] Furthermore, while certification theoretically assures that automotive repairs will be performed competently, there is no guarantee that certified mechanics will be honest.

The National Automobile Dealer Association, at the request of the United States Department of Health, Education and Welfare, Office of Consummer Affairs, established a program designed to resolve consumer complaints involving automobile dealers. Automobile Consumer Action Panels (Auto-Caps) attempt to settle non-legal disputes at the dealer/manufacturer level.[33] The panels are usually sponsored by local automobile dealer associations and are composed of consumer and service representatives as well as professional mediators. As of mid-1974, Auto-Caps had been established in fifteen cities; presently, the total number is thirty-four, and four more have been proposed.[34] The growth of these complaint-settling devices implies that they are having some success in resolving the non-legal repair disputes.

General guidelines applicable to the entire service and repair industry were proposed in a 1973 report by the National Business Council for Consumer Affairs' Sub-Council on Performance and Service. The report assessed the reasons for consumer dissatisfaction with the performance and servicing of a variety of products and recommended the development of a uniform state law for licensing and regulating service firms. In addition, the following guidelines were suggested as a "Code of Responsible Servicing Practices":

1. Customers should be offered an estimate of cost in advance of services to be rendered.

2. Customers should be promptly notified if service appointments cannot be kept.

3. Only repairs authorized in writing by the customer should be performed, except where other arrangements have been made to the customer's satisfaction.

4. A written, itemized invoice for all parts, labor, and any other charges, should be given to the customer upon completion of the work.

5. All repair services should be guaranteed for a reasonable length of time.

6. Appropriate records of services performed and materials used should be maintained by the service company for at least one year.

7. Service technicians should not be paid on a basis that is contingent upon the size of the customer's repair bill.

8. The service dealer should maintain insurance coverage adequate to protect the customer's property while it is in his custody.

9. Service dealers should cooperate with consumer protection agencies at all levels of government to insure satisfactory resolution of consumer complaints.

10. Customers should be treated courteously at all times, and all complaints should be given full and fair consideration.[35]

The effectiveness of such self-regulated programs and industry's enforcement power over the established programs have been criticized. A recent law review article questions industry's motivation for developing such programs, because "the industry responses lack the force of law and thus can only recommend, rather than require, compliance with standards of performance or conduct."[36] These kinds of problems have provided impetus for legislative regulation of the automotive repair industry in some states.

Industry Opposition to Statutory Remedies

States which recognize the need for remedial actions to eliminate or minimize motor vehicle repair abuse may encounter difficulty in establishing such measures, because of strong industry opposition. One study reported that although an increasing number of jurisdictions proposed legislation concerning automobile repair problems between 1968 and 1972, "industry opposition to such proposals was cited as the cause of their failure in 57 percent of the reports listing a specific reason for legislative proposal failure."[37] Other studies have examined reasons for the automotive industry's resistance to such regulation.

In Wisconsin, the auto repair industry acknowledged that some type of control was necessary in order to handle repair fraud and mechanic incompetency, but it strongly challenged the suggested form of regulation. The original draft of administrative rules regulating automobile trade practices by the Division of Motor Vehicles, which became effective July, 1972, subsequently encountered "suspension, revision, delays and . . . legal action to prevent enforcement of the regulation. . . ." The key objection to the draft rules, which applied only to automobile dealers, was that they were not broad enough because they failed to "include regulation of service stations, private garages and others in the automobile repair business."[38] Other objections to the draft included charges that the rules not only raise costs, but that they would create unnecessary and burdensome paperwork forcing small operators out of business.

Industry opposition to the 1972 rules caused the Department of Agriculture to promulgate revised regulations, which became effective in 1975.[39] The revised regulations apply to: "Any individual, corporation, partnership, or other form of business organization engaged in the motor vehicle repair business, and all officers, directors, agents, employees and representatives thereof."[40] Perhaps as a result of this broader application, this rule has been more readily accepted than the 1972 rule.

In Vermont, the scope of proposed motor vehicle repair regulations[41] was not in question. Rather, industry representatives charged that any regulation is anti-consumer because it would drive up the cost of automobile repairs.[42] The charge apparently stems from the belief that regulation necessitates raising hourly rates to cover added costs for paperwork. The repeal of the motor vehicle repair regulations on February 26, 1976 by the state's legislature is an example of industry's effective lobbying.

Another area that might stimulate industry opposition to remedial measures occurs where state legislatures delegate rulemaking authority to administrative agencies. The argument of industry is that the legislature unconstitutionally delegated its authority by failing to provide specific standards to guide the administrative agency in promulgating rules. However, the constitutionality of such delegation has been upheld in several cases involving states' consumer protection laws.[43]

Opposition to regulation may be mitigated if industry representatives are allowed to participate in the regulatory process. For example, states that establish an advisory panel or board consisting of members from the public and industry to oversee automobile repair practices provide industry an opportunity to voice and protect its interests.[48] Care should be taken that the industry is not allowed to dominate the board, or regulation might be ineffective.

CHAPTER 4. STATUTORY APPROACHES

States are attempting to alleviate automobile repair abuses by applying their basic consumer protection statute or by drafting legislation specifically drawn to meet this problem. To supplement these basic statutes, rulemaking authority is often delegated to the agency that administers the statute. Rules adopted by the agency have the force of law; consequently, the sanctions applicable to violations of the statute apply to violation of the rules.[45] Table 1 on the following pages list states that have some form of general consumer protection legislation. Particular characteristics of auto repair legislation are listed in Table 2. States that have adopted specific legislation to regulate automotive repair are listed in Table 3.

The President's Office of Consumer Affairs, in its 1974 Consumer Auto Repair Problems, reports that licensing of either repair shops or mechanics, or both, is the approach most frequently proposed in states in order to deal with automotive repair abuses. In addition to licensing, some states have contemplated proposing legislation requiring estimates for repairs, bonding of persons engaged in auto repairs, and establishing regulatory boards to govern the repair industry.[46]

This section will highlight considerations involved in specific regulatory provisions and will summarize state legislative actions designed to eradicate automotive repair abuses.

The Licensing Approach

Several states have enacted legislation requiring the licensing of automobile repair shops and to require the certification of mechanics.[47] It has been stated that the objectives of regulating the automotive repair industry through licensing are to insure competent repair by establishing minimum standards for certification of shops and mechanics, and to provide an alternative to litigation for redressing consumer grievances by creating an agency equipped to investigate and settle consumer complaints.[48] Further, the licensing statutes could minimize deceptive trade practices by authorizing the state to revoke licenses when such practices are shown to exist.

Despite the worthwhile objectives of licensing, there are competing considerations. In a speech by Lewis A. Engman, Chairman of the Federal Trade Commission, to the National Association of Attorneys General, the impact of licensing on the costs of services was noted:

> As new occupations are licensed each year, the restrictions on occupational freedom grows apace. Individuals who once might have simply started practicing a trade must subject themselves to extensive training, examinations and character investigations. The evidence is not persuasive that all these restrictions benefit the public. The evidence is more persuasive that by limiting entry, these restrictions raise prices.[49]

His statement was based on an FTC staff report that examined prices and the incidence of repair fraud in the television industry of three jurisdictions: Louisiana, which has a mandatory licensing system for the industry; California, which utilizes a registration system; and the District of Columbia,

TABLE 1. UNFAIR OR DECEPTIVE TRADE PRACTICE STATUTES

Jurisdiction	Title/Statutory Citation
Alabama	No relevant statute
Alaska	Unfair Trade Practices and Consumer Protection ALASKA STAT. §§ 45.50.471 to 45.50.561
Arizona	Consumer Fraud Act ARIZ. REV. STAT. ANN. §§ 44-1521 to 44-1534
Arkansas	Consumer Protection Act ARK. STAT. ANN. §§ 70-901 to 70-913
California	Consumer Legal Remedies Act CAL. CIVIL CODE §§ 1750 to 1784 Advertising - False Advertising In General CAL. BUS. & PROF. CODE § 17500 et seq.
Colorado	Consumer Protection Act COLO. REV. STAT. ANN. §§ 6-1-101 to 6-1-114
Connecticut	Unfair Trade Practices CONN. GEN. STAT. ANN. §§ 42-110(a) to 42-110(e)
Delaware	Consumer Fraud DEL. CODE ANN. tit. 6, §§ 2511 to 2527
Florida	Deceptive and Unfair Trade Practices Law FLA. STAT. ANN. §§ 501.201 to 501.213
Georgia	Fair Business Practices Act of 1975 GA. LAWS 1975, p. 376, et seq.
Guam	Trade Practices and Consumer Protection Public Law 9-67 (1967)
Hawaii	HAWAII REV. STAT. §§ 480-1 to 480-24
Idaho	Consumer Protection Act IDAHO CODE ANN. §§ 48-601 to 48-619
Illinois	Consumer Fraud and Deceptive Business Practices Act ILL. ANN. STAT. 1211/2, §§ 261 to 272
Indiana	Deceptive Consumer Sales Act IND. ANN. STAT. §§ 24-5-0.5-1 to 24-5-0.5-6
Iowa	Consumer Fraud Act IOWA CODE ANN. § 713.24
Kansas	Consumer Protection Act KAN. STAT. ANN. §§ 50-623 to 50-643
Kentucky	Consumer Protection Act KENT. REV. STAT. §§ 367.110 to 367.300
Louisiana	Unfair Trade Practices and Consumer Protection Law LA. STAT. ANN. §§ 51-1401 to 51-1418
Maine	Unfair Trade Practices ME. REV. STAT. ANN. tit. 5, §§ 206 to 214
Maryland	Consumer Protection Act MD. ANN. CODE COMM. LAW ART. tit. 13, §§ 513-101 to 513-501
Massachusetts	Consumer Protection Act MASS. GEN. LAWS ANN. ch. 93A, §§ 1 to 11
Michigan	Assorted statutes, no general unfair or deceptive trade practices statute
Minnesota	Consumer Fraud Act MINN. STAT. ANN. §§ 325.79-80, 325.907
Mississippi	Consumer Protection Act MISS. CODE ANN. §§ 75-24-1 to 75-24-23
Missouri	MO. ANN. STAT. §§ 407.010 to 407.130

TABLE 1. UNFAIR OR DECEPTIVE TRADE PRACTICES STATUTES

Jurisdiction	Title/Statutory Citation
Montana	Unfair Trade Practices and Consumer Protection Act MONT. REV. CODE ANN. §§ 85-401 to 85-418
Nebraska	Consumer Protection Act NEB. REV. STAT. §§ 59-1601 to 59-1623
Nevada	NEV. REV. STAT. §§ 598.360 to 598.640
New Hampshire	N.H. REV. STAT. ANN. §§ 358-A:1 to 358-A:12
New Jersey	N.J. STAT. ANN. §§ 56:8-1 to 56:8-20
New Mexico	Unfair Practices Act N.M. STAT. ANN. §§ 49-15-1 to 49-15-18
New York	False Advertising NEW YORK GEN. BUS. LAW § 350 et seq. NEW YORK EXEC. LAW § 63, subdivision 12
North Carolina	Consumer Protection Act N.C. GEN. STAT. §§ 75-1 to 75-19
North Dakota	Consumer Fraud N.D. CENT. CODE §§ 51-15-01 to 51-15-10
Ohio	Consumer Sales Practices Act OHIO REV. CODE §§ 1345.01 to 1345.13
Oklahoma	Consumer Protection Act OKLA. STAT. ANN. 15 §§ 751 to 765
Oregon	Unlawful Trade Practices Act ORE. REV. STAT. §§ 646.605 to 646.652
Pennsylvania	Unfair Trade Practices and Consumer Protection Law PA. STAT. ANN. §§ 201-1 to 201-9
Puerto Rico	Act No. 77, Acts of Puerto Rico
Rhode Island	Deceptive Trade Practices Act R.I. GEN. LAWS ANN. §§ 6-13.1-1 to 6-13.1-7
Samoa	No relevant statute
South Carolina	Unfair Trade Practices Act S.C. CODE ANN. §§ 66-71 to 66-71.15
South Dakota	S.D. COMP. LAWS ANN. §§ 37-24-1 to 37-24-35
Tennessee	No relevant statute
Texas	Deceptive Trade Practices and Consumer Protection Act TEX. BUS. & COM. CODE §§ 17.41 to 17.63
Utah	Consumer Sales Practices Act UTAH CODE ANN. §§ 13-11-1 to 13-11-23
Vermont	Consumer Fraud VT. STAT. ANN. tit. 9, §§ 2451 - 2462
Virgin Islands	V.I. CODE tit. 12A, §§ 101 - 110
Virginia	Assorted statutes, no general unfair or deceptive trade practices statute
Washington	Consumer Protection Act REV. CODE WASH. ANN. §§ 19.86.010 to 19.86.920
West Virginia	General Consumer Protection W. VA. CODE ANN. §§ 46A-6-101 to 46A-6-108
Wisconsin	WIS. STAT. ANN. § 100.20
Wyoming	Consumer Protection Act WYO. STAT. ANN. §§ 40-102 to 40-113

TABLE 2. SPECIFIC AUTOMOTIVE REPAIR LEGISLATION

Jurisdiction	Legislation
Alabama	none
Alaska	none
Arizona	none
Arkansas	none
California	CAL. BUS. & PROF. CODE ANN. § 9880-9889.20 (West 1975)
Colorado	none
Connecticut	CONN. GEN. STAT. ANN. § 14-51 et seq. (1970)
Florida *	none
Georgia	none
Hawaii	HAWAII REV. STAT. § 437B (Supp. 1975)
Idaho	none
Illinois	none
Indiana	none
Iowa	none
Kansas	none
Kentucky	none
Louisiana	none
Maine	none
Maryland *	MD. ANN. CODE §§ 14-1001 - 14-1009 (1975)
Massachusetts*	none
Michigan	MICH. COMP. LAWS ANN. § 257.1301 et seq. (Supp. 1976)
Minnesota	proposed
Mississippi	none
Montana*	MONT. REV. CODE ANN. § 53-1101 et seq. (Supp. 1975)
Missouri	proposed
Nebraska	none
Nevada	NEV. REV. STAT. § 487.035 (1973)
New Hampshire	NEW HAMP. REV. STAT. ANN. § 269:8 (Supp. 1975)
New Jersey*	none
New Mexico	none
New York	N.Y. VEH. & TRAF. LAWS §§ 398-398(h) (McKinney Supp. 1975)
North Carolina	none
North Dakota	none
Ohio*	none
Oklahoma	none
Oregon	none
Pennsylvania	none
Rhode Island	R.I. GEN. LAWS ANN. § 5-38-1 et seq. (Supp. 1975)
South Carolina	none

TABLE 2. SPECIFIC AUTOMOTIVE REPAIR LEGISLATION

Jurisdiction	Legislation
South Dakota	none
Tennessee	none
Texas	none
Utah	none
Vermont	none
Virginia	proposed
Washington	none
West Virginia	none
Wisconsin*	proposed
Wyoming	none

*Several states have adopted rules and regulations in order to combat auto repair abuses. New Jersey, Ohio, Florida, Montana and Wisconsin have regulations that require written estimates. Maryland has proposed rules relating to auto repair facilities. Massachusetts is in the process of promulgating repair rules.

TABLE 3. CHARACTERISTICS OF AUTO REPAIR LEGISLATION

	Cal.	Conn.	Hawaii	Md.	Mich.
Provisions					
Licensing or Registering Mechanics/Dealers	X	X	X		X
Bonding of Mechanics/ Dealers		X			
Estimate Required	X		X	X	X
Authorization to Proceed Required	X		X	X	X
Return Parts	X		X	X	X
Disclosure Customer Rights	X		X	X	X
Invoice Required	X		X	X	X
Enforcement By					
Attorney General				X	X
Other State Agency	X	X	X		X
Remedy					
Injunction	X		X		X
Damages	X		X	X	X
Penalty					
Civil Penalties	X	X	X		X
Criminal Penalties					X
Deprivation of Lien	X				X
Suspension or Revocation of License	X	X	X	X	X
Rulemaking Authority	X		X		X

TABLE 3. CHARACTERISTICS OF AUTO REPAIR LEGISLATION

	Mont.	Nev.	N.H.	N.Y.	R.I.
Provisions					
Licensing or Registering Mechanics/Dealers	X			X	X
Bonding of Mechanics/ Dealers					
Estimate Required		X	X	X	
Authorization to Proceed Required		X	X	X	
Return Parts Required				X	
Disclose Customer Rights					
Invoice Required		X		X	
Enforcement By					
Attorney General	X	X			
Other State Agency		X	X	X	X
Remedy					
Injunction		X		X	
Damages					
Costs					
Attorney's Fees					
Penalties					
Civil Penalties		X		X	X
Criminal Penalties		X	X	X	
Deprivation of Lien	X	X			
Suspension or Revocation of License			X	X	X
Rulemaking Authority	X			X	

which has no controls. In Louisiana, the price of repairs was higher by more than 20 percent than in the other two jurisdictions.[50]

Another consideration suggested by recent law review articles is that any occupational licensing statute creates the risk of unnecessarily limiting competition in the affected industry.[51] The argument is that automobile repair legislation should not strengthen the economic position of the regulated parties. However, if the emphasis is placed on eradicating incompetence by establishing extremely high examination requirements, then an undue barrier to entry into the occupation may result and enhance the mechanic shortage.[52]

A mechanic certification statute and a repair facility registration statute might have different effects on competition. The Michigan statute, which requires examinations[53] for mechanics, might be more susceptible to the criticism that it creates an undue barrier to entry than would statutes which merely require registration. However, there are provisions in the Michigan auto repair law which tend to weaken this criticism. These provisions allow noncertified mechanics to work under the supervision of certified personnel, and provide for the education of mechanic trainees who desire to become specialty or master mechanics.[54] Utilizing specialty categories, rather than a single mechanic standard, enables persons with limited areas of expertise to gain certification; consequently, this method lessens barriers to entry into the occupation.

The registration statutes found in California and New York are not as likely to be criticized for erecting barriers to entry, because the registration system which requires anyone operating an auto repair facility to register, is not designed to exclude initially registrants by examinations. Rather, to protect the public from incompetence, the registrations of the marginally skilled are revoked for violations of prescribed standards. In California, evidence of gross negligence warrants revocation of registration.[55] The New York standard for revocation is grossly negligent work on two or more occasions.[56]

A recent report by the National Association of Attorneys General quoted studies showing that sixty-seven occupations are licensed by five or more states, and that the states license an average of one hundred occupations each. The report noted that increasing criticism is being directed to this proliferation of licensing provisions, and that there is a trend toward reviewing the rationale for some present licensing requirements. It concluded that "there are numerous problems involved in such licensing, and ... the states must examine these problems, rather than allow the continued expansion of licensing to other occupations and professions."[57]

Regulating Repair Facilities

In addition to licensing requirements, seven states have adopted specific provisions regulating the daily operation of automotive repair facilities. These provisions require facilities to provide written estimates, obtain the owner's authorization before exceeding the estimate, return replaced parts, provide an itemized invoice that specifies parts and labor supplied, and conspicuously disclose customer rights. These requirements benefit consumers by providing evidence to substantiate a claim of deceptive practices. Further, the requirements may deter facilities from engaging in such practices.

Some industry representatives charge that estimate requirements are detrimental to consumers in that they cause overcharging. They contend that "it is impossible to give an accurate estimate since the full extent of repairs cannot be determined until the engine has been partially disassembled; consequently, if mechanics are required to give an estimate they will overcharge in order to protect themselves."[58] The response to the overcharging argument is that estimate requirements do not threaten adequate pricing since repair facilities are not absolutely limited to the original estimate; they are required only to obtain the customer's consent before making repairs not covered by the estimate.

Table 3 presents an analysis of existing auto repair laws. Of the ten states which have such statutes, seven require that auto mechanics and/or dealers be licensed and one requires that they be bonded. All but one of those states licensing auto mechanics and/or dealers require a cost estimate and an authorization to proceed before making repairs at costs exceeding the given estimate. Written estimates are required by rules and regulations in five states. Four require the return of replaced parts unless: the customer waives his right to return; the size or weight of the parts makes return impractical; a warranty arrangement requires that parts be returned to the manufacturer; selling parts occurs on an exchange basis; and no charge is made for the replaced parts.[59] Four require that customers' rights be disclosed to them on a written invoice, a sign conspicuously posted, or both. Six have provisions mandating a written invoice which must detail the condition and cost of parts installed and time and expense for labor.

Enforcement authority for auto repair laws is not uniformly vested. For instance, Maryland and Michigan vest enforcement authority in the Attorney General. In Michigan, this authority is shared with the Secretary of State. Connecticut, New Hampshire, and New York vest this authority in their motor vehicle commissioners. Administrative boards or commissions have such responsibility in California, Hawaii, and Rhode Island.

Available remedies also vary. Three states provide both for injunctions and private suits for damages. Recovery in most auto repair laws is limited to actual damages. Recovery of costs and attorneys' fees is authorized by the Michigan auto repair law, but no provisions are made for these features in other auto repair laws. Auto repair laws which not only limit recovery to actual damages, but fail to authorize recovery of costs and attorneys' fees, undoubtedly deter consumers' suits because the high cost of litigation makes suits seeking recovery of the relatively small amount of money, in most instances, economically impracticable. The problem can be resolved by awarding attorneys' fees and costs for a consumer who successfully pursues his claim.[60]

Table 3 shows the types of penalties imposed on violators of auto repair laws. California, Hawaii, Michigan, and Montana preclude violators of their respective auto repair laws from asserting liens for the cost of repairs. Civil penalties may provide an incentive for repair facilities to engage in honest business practices, especially if the amount of the civil pension or revocation of license is crucial to repair facilities and mechanics because if these remedies are activated, the facilities will lose revenue. Revocation of license is critical, because the effect is to put unscrupulous repair facilities out of business.

More detailed discussion of various state regulating schemes is given on the following pages. Michigan and Ohio laws are discussed in the next chapter.

Provisions of State Legislation

In early 1976, the Committee on the Office of Attorney General surveyed Attorneys General's offices concerning legislation relating to auto repair abuses. The following discussion is based primarily on responses to the survey.

California. The California Automotive Repair Act of 1971,[61] is the first comprehensive legislation regulating automobile repair dealers. The Act established a Bureau of Automotive Repair within the Department of Consumer Affairs.[62] The Bureau assists the latter agency by inquiring into practices of the repair industry, conferring with the Consumer Protection Director and recommending rules and regulations. The statute requires that four of the Bureau's nine board members be selected from the automotive repair industry.[63] All businesses engaged in repairing, maintaining or diagnosing malfunctions of motor vehicles are required by law to register with the Bureau and to pay an annual $50 license fee.[64]

The Bureau's principal enforcement tool is the temporary or permanent suspension of the license of a dealer for failure to follow acceptable business practices. Specific acts which may cause such suspension of a dealer's registration include: (1) making any statement which is known to be untrue or misleading; (2) allowing a customer to sign a work order which does not specifically list the requested repairs and the vehicle's odometer reading; (3) failing to provide a customer with a copy of any document requiring his signature; (4) failing to comply with accepted trade standards for good and workmanlike repair; (5) failing to record on an invoice all repairs made including charges for both parts and labor; and (6) failing to provide the customer with a written estimate of repair costs and with replaced parts if requested.[65]

The Act provides some protection for consumers against a mechanic's lien by precluding its use by facilities that fail to register.[66] In addition, individual suits for damages are authorized.[67]

Of the types of complaints received by the Bureau during its initial year of operation, the largest number related to the failure to provede written estimates of repair work. As indicated by the following tabulation, the failure to provde written estimates remained the major complaint handled by the Bureau during July, 1972 to July, 1973:

Type of Complaint	Number
Failure to provide advance written estimate	6,249
Repairs exceed written estimates	2,289
False promises	2,238
Unnecessary repairs	903
Failure to provide itemized invoice	786
Misleading statements	517
Gross negligence	368
Willful departure from accepted trade standards	271
Operating without repair license	239
Used parts not returned as requested	208
Unauthorized subletting of repair work	116
Failure to provide copy of signed agreement	69
Failure to note odometer reading	55

The California Act has served as a model for other states contemplating similar legislation.

Connecticut. The Connecticut statute, which was enacted in 1949, is basically a licensing system that requires a repairer be a "qualified mechanic," in order to engage in the business of repairing motor vehicles.[68] The courts have broadly interpreted the term "qualified" in order to prohibit practices which are detrimental to consumer interests. For example, in J. & E. Auto Serv., Inc. v. Comm. of Motor Vehicles,[69] the court held that a used car dealer, who, while repairing a customer's car, drove it 546 miles without permission, was not "qualified."

A repair license requires a $12 fee and must be renewed on an annual basis.[70] Grounds warranting suspension or revocation of a license include: (1) failing to maintain records of transactions concerning the repair of automobiles; (2) failing to allow the commissioner to inspect the records; (3) violating any Connecticut statute or regulation or any federal statute pertaining to his business as a licensee; or (4) making a false statement about the condition of a repaired motor vehicle. Where a violation of the law pertaining to automobile repairs is established, the repair facility must, as a condition to continued licensure or reinstatement of such license, furnish to the Commissioner of Motor Vehicles a $1,000 bond.[71]

Hawaii. The approach adopted by this state is similar to that of Michigan in that it establishes a system of registering and certifying motor vehicle repair dealers and their mechanics. Unlike the Michigan auto repair law, however, Hawaii's Regulation of Motor Vehicle Repairs Act creates a motor repair industry board within the Department of Regulatory Agencies.[72] Three of the board's seven members must be affiliated with the repair industry. The board is empowered to: (1) establish qualifications for the registration of motor vehicle repair dealers and mechanics; (2) investigate practices and policies of the auto repair industry; (3) assist in establishing and administering a certification program; (4) promulgate rules to effectuate the purpose of the Act; and (5) enforce the Act and rules adopted.[73]

Auto repair activities are limited to those areas for which the registrant is certified. The board's certification program consists of both a written and performance test. Hawaii's auto repair law requires the certification of any person performing major automotive repairs for compensation; however, it lessens the efficacy of this requirement by including a "grandfather clause" which exempts from the certification tests persons having two years experience prior to January 1, 1976 and who apply for registration before June 30, 1976. Certification, which is a condition precedent to registration, requires the payment of a $50 fee per motor repair dealer and a $20 fee per motor vehicle mechanic.[74]

The obligations of repair facilities are clearly delineated. They are obligated to prepare an invoice for repairs; return replaced parts at the customer's request, unless an exception applies; maintain records for inspection as required by rules adopted by the board; and place conspicuously a sign describing customers' rights under the Act.[75]

The Act also specifies prohibited practices. The amount of any fine imposed for engaging in the proscribed conduct is determined by a graduated schedule of offenses. For example, a $75 fine is imposed for a first offense; second or subsequent offenses may result in fines ranging from $150 to $1000. The board may order restitution in lieu of a fine even though the amount exceeds the fine schedule. Engaging in the prohibited practices also subjects the offender to suit by individuals, as well as by the Office of Consumer Protection. Furthermore, failing to register deprives facilities of the benefit of any liens stemming from a repair transaction.[76]

Maryland. Although Maryland uses its unfair and deceptive trade practices statute to achieve settlements with automotive repair facilities,[77] it has strengthened protection for consumers in need of auto repair service by enacting an Auto Repair Facilities Act.[78] The Act is not as comprehensive as the auto repair laws adopted in California, Michigan and Hawaii in that it does not establish a regulatory agency to administer its provisions, nor does it require the registration of repair facilities or mechanics.

There are four principal requirements of this Act: (1) a written estimate must be provided, at the customer's request, for repairs costing in excess of $50; the estimate must include the estimated completion date and the estimated price for labor and parts; (2) the repair facility is allowed to charge a reasonable fee for making the estimate; (3) with the exception of parts required to be returned to the manufacturer under a warranty agreement, the automotive repair facility must return replaced parts upon completion of repairs; and (4) the invoice must describe all work performed, all parts supplied by the repair facility and the condition of parts supplied.[79]

The Act prohibits charging for unauthorized repairs unless permission to perform the work has been granted by the customer. It also prohibits charging an amount exceeding 10 percent of the written estimate without the customer's oral or written consent. A violation of the Act is deemed an unfair or deceptive practice and civil actions are specifically authorized.[80] There is no provision designed to deprive a repair facility of the benefit of a mechanic's lien pending the resolution of a dispute.

Nevada. Repair shops are required by law to furnish a statement of charges for automobile repairs. The statement must include: (1) the name and signature of the person authorizing the repairs; (2) a statement of the

total charges; (3) an itemization and description of all parts used to repair the automobile; and (4) a statement of the charges made for labor.[81] Repair shops that fail to provide a statement of charges for automobile repairs, including the information previously specified, are not entitled to a lien for labor or materials provided.[82] The Nevada auto repair law does not require the registration of dealers or mechanics.

New Hampshire. No comprehensive legislation regulating automobile repairs has been drafted by this state. The Consumer Protection Division is, however, considering the possibility of instituting lawsuits against several repair facilities for deceptive practices.

There is a law requiring estimates, which provides that:

> Every repairman who agrees to perform any repair on a customer's motor vehicle shall give to such customer a written estimated price for labor and parts necessary for such repair. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied which exceeds the estimated price by more than ten percent without the oral or written consent of the customer which shall be obtained at sometime after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied except for amounts of fifty dollars or less. Nothing in this section shall be construed as requiring a repairman to give a written estimated price if he does not agree to perform the requested repair.[83]

The written estimate must include "a statement of any automotive service which, if required to be done, will be done by someone other than the repairman or his employees."[84] Even if the repairs are performed by someone other than the repairman, he is responsible for any such service in the same manner as if he or his employees had done the service.

New Jersey. Regulations pertaining to motor vehicle and appliance repairs have been adopted by the Attorney General's office. "There have been several litigations involving these regulations and related practices by motor vehicle. . . repairmen. None of the litigations, however, has concluded with a reported opinion."[85] Requirements imposed on repair facilities are similar to the written estimate requirements existing in Maryland. One difference is that the estimate is mandatory in New Jersey, while the Maryland estimate requirement is activated only if the customer requests an estimate.

The position of the administering agency in automotive repair cases arising in New Jersey may be of interest to other states:

> The administering agency generally attempts to take the position where a clear cut violation of the regulation exists (e.g., total absence of the estimate in writing or a deviation therefrom without prior consumer consent) that a mediated settlement should contemplate a loss of all profit on the repair job, however, the consumer should not receive a windfall and therefore should pay the

wholesale cost of any parts installed by the repairman. This approach is used usually in those cases where isolated, single complaints are involved and where mediation as a policy matter is desirable in lieu of the initiation of formal action.[86]

New York. The New York Motor Vehicle Repair Shop Registration Act, which became effective June 1, 1975, requires registration of repair facilities, but not mechanics.[87] The Act contains specific procedures for invoices, estimates, and the return of replaced parts.[88] However, there is no explicit provision for individual actions.

The Act provides a noteworthy procedural system for regulated parties. Should an unfavorable ruling be rendered by the Commissioner of Motor Vehicles, the repair facility has an administrative appeal to a board of five persons, two of whom must represent the repair industry. Judicial review of these administrative proceedings is available.[89]

Rhode Island. The licensing approach has been adopted by Rhode Island.[90] However, the scope of the statute is limited in that it requires licensing only of shops which repair bodies and fenders. Establishments which repair chassis, seats, motors, transmissions, and other accessories are specifically excluded.[91]

An amendment of the state's deceptive practices law has been proposed. The proposed amendment pertains to repairs and services and describes conduct that constitutes an unfair or deceptive act. Conduct prohibited by the proposed amendment includes: (1) failing to provide a written estimate for repairs in excess of $25; (2) failing to obtain the customer's authorization for repairs when they amount to 10 percent or more of the original estimate; (3) misrepresenting that repairs are necessary; and (4) failing to provide an invoice of work performed.[92]

Utah. Legislation regulating automobile repairmen was proposed in 1975, but was not passed. Notwithstanding the failure of the legislature to pass the proposed legislation, the Utah Trade Commission, which is the administrative agency charged with enforcement of the Consumer Sales Practices Act, promulgated rules entitled, "Repairs and Services." Obligations imposed on repairmen are similar to those required by Rhode Island and Maryland. Since these rules have been in effect a short time, there is no history of effective enforcement.[93]

Wisconsin. A regulation entitled "Motor Vehicle Repair" became effective on September 1, 1975. The regulation requires that repair shops provide customers with either a "choice of estimate alternatives" if the cost of repair of the vehicle exceeds $25 or a price quotation if the customer brings the automobile to the shop within five days and during regular working hours. Repair shops can charge for an estimate only if they disclose in advance what the fee will be, or the basis on which it will be calculated.[94]

Repair shops are required to return replaced parts to the owners if they are requested at the time the repair order is given. An exception to this requirement occurs where the parts must be returned to the manufacturer because of a warranty or exchange agreement.[95] In addition to returning replaced parts, the repair shops must provide each customer a copy

of a dated invoice for any repairs to the automobile. Furthermore, if the flat rate average time is stated, then the actual time required to perform the repair work must also be stated on this invoice.[96]

Prohibited practices are clearly specified. Shops shall not misrepresent directly or by implication: (1) the cost of repairs authorized by the customer; (2) the terms or conditions of any warranty or service agreement; (3) that repairs are necessary; (4) that repairs have been made; or (5) that the motor vehicle is in a dangerous condition.[97]

An attempt to evade the regulation has been cited. Some automotive repair shops have attempted to pressure customers into waiving their right to a written estimate by quoting excessive charges for the preparation of estimates.

States Proposing Legislation or Regulations

In addition to those Attorneys General reporting the adoption of auto repair legislation, some reported other relevant action in this area.

Idaho. This state is considering the possibility of proposing legislation relating to regulation of motor vehicle repairs, but no proposals have yet been drafted. Its Consumer Protection Act defines various unfair and deceptive trade practices, and "such prohibitions have been generally effective in handling any consumer complaints arising in the area of motor vehicle and appliance repairs."[98]

Maine. Regulations are being developed by the Attorney General's office to deal with the following: (a) misunderstandings as to the service work to be performed; (b) the total cost of the work; (c) the date on which the work is to be completed; and (d) disagreements as to what, if any, aspect of the service work is guaranteed and for how long.[99]

Oregon. Two different auto repair bills were introduced in the Oregon legislature during the 1975 session. The objectives of these bills were to create a vehicle repair board and to require licensing of motor vehicle mechanics and service managers. Neither one was enacted. An Auto-Cap program has been instituted in Oregon.[100]

Texas. Most motor vehicle repair problems come within the Texas Deceptive Practices Statute. There is no specific motor vehicle repair legislation. However, support for state licensing of repair shops to assure workmanlike standards has been expressed by the Attorney General's office, especially since the enactment of an Ordinance by the city of Dallas requiring registration of repair facilities, written estimates, invoice, return of replaced parts, and a conspicuously posted sign disclosing rights of customers.[101]

In summary, states are making an increasing effort to protect consumers from auto repair problems. Narrowly-drawn auto repair laws and regulations normally reach only fraudulent practices and they do not protect consumers from the honest, but incompetent mechanic. Thus, if maximum protection of consumers is desired, then auto repair laws and regulations must be drawn to reach both fraudulent conduct and incompetence. The effectiveness of a third approach, applying a deceptive trade practices statute to auto repair problems, and the Michigan repair law, which covers mechanic fraud and incompetence, will be discussed in the following chapter.

CHAPTER 5. CONTRASTING APPROACHES TO AUTO REPAIR FRAUD

This chapter examines the two most prevalent approaches to combating auto repair abuses. Ohio, like many other states, applies its consumer protection statute to complaints about automobile repairs; on the other hand, Michigan is one of the few states to enact specific and comprehensive legislation regulating the automotive repair industry. The chapter will highlight the operation of the Ohio Consumer Sales Practices Act[102] in terms of the Attorney General's enforcement experiences with respect to automotive repair fraud and incompetence. This discussion is based primarily on an interview with Robert S. Tongren, Chief of the Consumer Fraud and Crime Section of the Ohio Attorney General's office.[103]

The chapter will then examine the Michigan Motor Vehicle Service and Repair Act, which became effective March 1, 1976. Discussion of the Michigan Act is based on an interview with Assistant Attorney General Edwin M. Bladen, Chief of the Consumer Protection Division of the Michigan Attorney General's office.[104]

Ohio

Throughout the country and in Ohio, automobile complaints have consistently ranked as the number one consumer complaint. In Ohio, the Attorney General's office could not effectively respond to automobile complaints because it did not have adequately documented complaints detailing the nature of the repair problems and the kinds of repair service performed. For instance, a consumer would call and explain that, because of a funny noise under the hood, he had taken his car to ABC dealership and paid $100 for repair work; however, the noise remained. Since the Attorney General's office did not check the automobile either before it went into the shop or when it came back, it could not effectively respond to such complaints. Because an automobile is a technical product, the only way that a consumer protection enforcement agency can effectively deal with repair problems is to go out and test the cars.

To improve its ability to respond, the office started in 1972 to plan a program which was activated in 1974. It examined such questions as the cost of running a test program, the number of dealerships to be tested, and whether to have a major or minor defect in the vehicle to be presented for repair. Educational institutions and individuals in Ohio were contacted to see whether they could assist in such determinations. Detroit Testing Laboratories, Inc., was finally selected to plan the program. DTL recommended the type of defects to be studied and the kind of automobile to be used in the test shops. It also assisted in supervising the program.

Before the Attorney General's investigators drove a vehicle to a repair shop, DTL made a documented check of the car to assure that, with the exception of the controlled defect, everything was in running order. After the car was serviced, the investigators returned it to DTL, which examined the vehicle to find out whether repairs were done as they were represented, whether repairs were in fact necessary, and so forth.

One problem was to prevent auto repair facilities from knowing that they were, in fact, being tested. The investigators started in the Cleveland metropolitan area; as a result of that investigation, suits were filed

against eight different dealerships. As soon as the suits were filed in Cleveland, the auto dealers suspected of engaging in deceptive repair practices, temporarily avoided such practices.

The investigation disclosed types of repair abuses committed by auto dealers. A defective spark plug wire was used in some cars to be tested. All that was necessary to correct such a defect was to replace the one wire. Dealers, however, recommended valve jobs, tune-ups and other repairs. The primary form of abuse was found to be representing that repair work was needed when it was actually unnecessary. In some instances, the dealership billed for repairs that the expert concluded could not possibly have been made. DTL had sprayed the engines with a dye that would reflect under a black light. If a repairman touched a particular part of the engine, there would be a smudge on that part which would reflect under the black light.

A total of eighteen cases were filed as a result of these investigations. Albeit none have yet resulted in a reported opinion, a judgment entry has been made in Brown v. Joe Schott Chevrolet, Inc.,[105] which is representative of the type of relief sought in the remaining cases. Under terms of the judgment, the defendant, Joe Schott Chevrolet, its agents, officers, employees, successors and assigns are permanently enjoined from: (1) misrepresenting that repairs have been performed, when in fact, they have not been performed; (2) charging for repairs which were not performed; (3) charging for unnecessary repairs; (4) representing that repairs are of a "competent, workmanlike, and merchantable quality," unless they are, in fact of a "competent, workmanlike, and merchantable quality; (5) committing deceptive acts or practices as defined by Substantive Rule COcp-3-01.01 et seq., promulgated by the Director of the Ohio Department of Commerce; (6) charging for unauthorized repairs; and (7) committing any other deceptive practice in violation of Section 1345.02 of the Consumer Sales Practices Act.

The court also ordered the defendant to establish a quality control procedure to oversee and review all auto repairs performed by it. Pursuant to this procedure, the defendant must provide each consumer with an itemized list of repairs performed and the reason for such repairs; inspect mechanic work areas at least weekly to insure that no replaced parts are retained; and, at least monthly, inspect the work of each employee who performs repairs. Records of these inspections must be retained for three years.

To insure compliance with the judgment, the Attorney General is authorized to establish a compliance review program of the auto repair and service operation of Schott. Such program would allow the Attorney General to test shop and to examine the records of Schott without giving any prior notice. In addition, Schott would have to pay costs incurred in any test shop in which it has violated any provision of the judgment entry.

Prior to 1972, Ohio did not have a comprehensive consumer protection law. A report[106] on consumer protection in Ohio recommended that the Ohio legislature enact a consumer protection law, giving the Attorney General the authority to file lawsuits and seek restitution for consumers. Another part of the report dealt with various industries, such as automobile and T.V. repair. The legislature found that one estimate placed the annual loss

to Ohio consumers as a result of auto and appliance repair abuse at $50 million. These findings were a part of the basis for adopting the Consumer Protection Act.

The Consumer Sales Practices Act prohibits deceptive practices and unconscionable practices.[107] There is no prohibition against unfair practices; however, the Attorney General's office supports a proposed amendment that would prohibit such practices. The amendment is pending before the current legislature. It is not necessary to establish the supplier's intent under the Act. Thus, if he does something or says something which is not true, that is all that is required to establish deception.

There is industry opposition to proposals to regulate automobile repair. Industry representatives contend that, since they are already licensed, there is no need for further regulation. However, opponents of such proposals say that licensing does not guarantee continuous protection for consumers; it means only that the repairman took a test and that he met some educational requirement. Licensing does not guarantee that the repairman is honest, nor does it guarantee that he will remain competent.

The Director of Commerce is given authority to administer the Act. The legislation as passed by the House of Representatives gave the Attorney General's office authority to administer and enforce the law. The Senate, however, substituted the Director of Commerce. This change apparently resulted from a fear on the part of industry that the Attorney General would enforce the law too aggressively. Administrative authority includes the authority to educate, to adopt substantive rules, and to hold public industry hearings.[108]

The Attorney General is given authority to file suits based upon his own investigations and as well as when requested by the Director of the Department of Commerce. Thus, there is divided responsibility which has created several problems. Since the Department of Commerce staff are not attorneys, their investigations may not result in legally adequate evidence which is necessary for successful prosecution. Another problem that has occurred is duplication of effort; the Attorney General's staff may find that it is investigating the same company that the Department of Commerce is investigating.

In 1975 legislation was introduced to consolidate authority in the Attorney General's office. Some political issues developed because a Republican was entering both the Governor's office and the Department of Commerce, while a Democrat was entering the Attorney General's office. This bill, due to the manner in which it was passed by a then controlled democratic assembly, was challenged and is now waiting for a decision by the Ohio Supreme Court as to whether or not it was constitutionally passed.[109]

The Director of Commerce has promulgated repair rules under the statute. Eleven rules were adopted in June, 1973, dealing with various kinds of consumer transactions. One rule deals with repairs and services[110] and provides that the consumer must be given a written estimate of repairs when it is anticipated that they will exceed $25 dollars. This protects the consumer by giving him an idea of how much money it will cost to repair the item involved, so he can decide if it is worth the repair. Subsequent to giving an estimate, a repairman may determine that additional repairs are necessary. If the cost of those additional repairs exceeds the original

estimate by 10 percent, he may not perform those repairs unless he gets oral or written authorization from the owner. If a repairman does additional repairs without obtaining the prior consent of the consumer, then he cannot charge for those repairs.[111] The automobile industry has not made a specific challenge to these rules; however, they may be challenged in the cases pending now against the auto dealers.

The statute does not explicitly apply to the situation where an incompetent repairman is involved. However, incompetence has been involved in many home improvement and television repair actions brought by the state. The state's claim in those cases was that the repairman represented that repairs were necessary, when in fact, they were not. It can be argued that the consumer has a right to rely on the fact that the supplier who holds himself out as a repairman is in fact competent as a repairman. This argument has not specifically been raised in the eighteen auto repair cases. It is hoped that, because of the requirements of the law and rules, a businessman will attempt to make sure that his mechanics know exactly what they are doing. He will be legally responsible if they are incompetent.

Failure to fulfill the Act's advance notice requirement may provide a defense for repairmen who are charged with violating the Act. The supplier[112] must be given 30 days notice before suit is filed if the Attorney General seeks more than injunctive relief; this includes relief such as restitution, the adoption of a quality control procedure, or attorneys' fees. During that 30 day period, the Attorney General must request an assurance of voluntary compliance. The assurance is not filed with the court, nor is it enforceable as a court order. In some of the original eighteen cases, the state failed to satisfy this requirement of advance notice. As a result, some cases were dismissed; these are now on appeal.

Suppliers may also assert the defense of bona fide error. The essence of this defense is that, if a businessman shows the court that a violation was not intentional and that he had adopted procedures to insure against the violation occurring, the court will not then impose liability. When the Attorney General seeks an injunction, the burden of proof is clear and convincing evidence. Under this section, however, the standard of proof for a supplier is merely a preponderance of the evidence. For the purpose of establishing this bona fide error defense, defendants probably will use their service managers as witnesses to testify about their requirement for their mechanics. For example, they may show that they have to be sufficiently educated; that they have mandatory retraining programs; that they are periodically inspected; and that, before a major repair is done, the service manager must examine the car and confirm the mechanic's findings.

An issue that has not yet been litigated is whether there is a "consumer transaction"[113] within the meaning of the Consumer Sales Practices Act when the Attorney General's office intentionally induces a defect for the shops to repair. The Attorney General's office believes that the fact that the person seeking repair service is an investigator employed by the office is not relevant; the principal question is whether the supplier engaged in deception. Whether such deception involved a state investigator or a member of the consuming public is irrelevant.

The Attorney General's enforcement experiences to date may indicate a need to amend certain provisions. Senate Bill 156 passed the Senate Judiciary Committee in 1975 and is now pending before the Senate Rules Committee. The bill is designed to strengthen the Consumer Sales Practices Act. For

example, it would include unfair practices and would allow the court to award a reasonable attorney's fee in private and public actions if the plaintiff were successful in proving a violation. The bill would authorize the court to impose a civil monetary penalty of $1,000 per violation, with a total maximum of $50,000 per defendant. A fund would be created into which would go monies recovered as a result of the civil penalties or awards of attorney's fees.

The bill would also give courts the authority to put a supplier out of business by revoking his corporate charter for a willful violation. If the court issued an injunctive order and the Attorney General subsequently proved contempt, a court would have to revoke the corporation's license to do business unless it found that: the violation was not willful; the supplier had adopted procedures to avoid the violation in the future; or that the supplier had enough money to assure that he could comply with a future court order which required restoration to all consumers damaged by the subsequent violation.

The bill would also increase the minimum damage recovery. One remedy available under the present statute is the right to recover actual damages or a minimum of $100 in an individual action where there is either a violation of a substantive rule; specific deceptive acts listed in the law; or an act which has already been determined by a court to be a violation of the statute. Senate Bill 156 would raise that $100 minimum damage to $200. It would also authorize the consumer to recover two or three times the amount of damages.

The Attorney General's office believes that industry responses are not viable alternatives to state action, which is designed to alleviate automotive repair abuses. One reason is that, even if there is a dealer association in a state, not every auto dealer will necessarily be a member. Secondly, the association cannot take effective action when a member violates the association's code of ethics. The office also believes in the importance of consumer education. When it filed the eighteen lawsuits, it mailed guidelines to consumer groups and media. These guidelines informed them of their rights under the Repairs and Services Rule, told them about comparative shopping, and advised about finding reputable dealers.

Michigan

Prior to the adoption of specific legislation regulating automobile repair facilities, the Attorney General could file criminal proceedings against unscrupulous repairmen. Several cases under Michigan law indicated that representing that a repair was made, when it had not been made, constituted obtaining money by false pretenses. In these cases, the Attorney General could proceed by criminal action.

Actions involving repair abuse generally fell into two categories. First were complaints which the Attorney General's office attempted to mediate, but did not litigate because Michigan does not have a deceptive trade practices statute. The second category concerned auto dealers, but not independent garages.

Since 1949, Michigan has had a law which requires the licensing of new and used auto dealers. That statute also pertains to fraud, by specifying that anyone required to be registered under the act may lose his license or have it suspended if he is found guilty of a fraudulent act with respect to

motor vehicles.[114] This statutory langauge presents two issues. First, what constitutes fraud? Second, what is dealing with motor vehicles? The Attorney General's office concluded that dealing in motor vehicles could be judicially or administratively defined to include auto repair, and it proceeded on that basis. Facilities that engaged in fraud, such as representing that they had replaced parts when in fact they did not, were taken before the Michigan Secretary of State.

It is expected that an appellate decision on the question of vicarious liability of a dealer will be rendered soon.[115] The case resulted from a dealer survey undertaken by the Attorney General's office in which a car, having all its parts marked, was taken to a dealer by a staff member of the office. The dealer had the car for about a day. He charged a certain amount to replace the spark plugs, but the office proved that the plugs were not replaced. The dealer's defense was that the mechanic actually went to the parts shelf, checked out new plugs, but did not place them in the car. Instead, he stole them. The question then arose as to whether the intervening criminal act of the employee absolved the master of liability for fraud.

Traditionally, the master is liable for the conduct of his servants when they are acting within the scope and course of their employment or authority; the question then becomes whether or not the employee was acting within such course and scope. The state argued that the mechanic was acting within the scope of his employment. The dealer continued to represent that the repairs were made when they were not. The fact that he failed to maintain internal controls to prevent employee theft does not and should not render the public, which is a victim of that wrongdoing, helpless to seek redress. Eventually someone has to pay, and it has to be the master because he is better able to assume the risk of that kind of wrong.

Even if courts acknowledge that consumers can sue for damages or restitution in this type of situation, the question arises whether a penalty, such as revocation or suspension of license, should be imposed on the master for such wrongdoing. The issue is before the court of appeals in Michigan, and is a case of first impression in an automobile repair case.

Michigan attempted to resolve this problem in its Motor Vehicle Service and Repair Act. Section 37 of the Act says that, if a mechanic or mechanic trainee is employed by or enters into a contract with a motor vehicle repair facility, he shall be considered to be an agent of the motor vehicle repair facility, for the purposes of a civil action brought pursuant to the Act. The methods, acts and practices of the mechanic shall be construed as the methods, acts and practices of the motor vehicle repair facility. In addition, a person who directly or indirectly controls the facility or its employees, as well as a general partner, officers or directors, are jointly and severally liable among themselves for violations of the Act, unless they can demonstrate they did not know and, with the exercise of reasonable care, could not have known of the existence of a fact by reason of which a violation had occurred. This provision is vital to auto repair legislation because the dealer will claim that the mechanic exceeded the scope of his authority, and that he relied on the mechanic telling him that a part was repaired or replaced.

The Michigan Act is a substantial departure from prior law. It provides that a person subject to the Act should not engage or attempt to engage in a method, act or practice which is unfair or deceptive. The rules promulgated under the law provide guidelines to determine what is unfair or deceptive.[116] The Act provides for joint, independent or coordinated enforcement by the regulatory agency, the Attorney General, or the local prosecutor.

The Act also provides that the Attorney General or county prosecutor may, after receiving notice of an alleged violation without prior administrative proceedings have occurred, bring an action in the name of the people to enjoin it. In addition to giving the relief sought in the action, the court may suspend or revoke the registration or license. This means that the county prosecutor and the Attorney General can do everything that the administrator can do, including taking away a license, except issue licenses.[117]

The Michigan Act applies to all facilities that offer major repairs. The Secretary of State is authorized to determine what constitutes a major repair. He has promulgated rules which classify the following as minor repairs: radiators and component parts; shock absorbers; mufflers, and tailpipe operations.[118] The Secretary believes that these are minor repair services because they do not require mechanical expertise. The Attorney General's office disagrees, because it believes that repairs essential to the operation of the vehicle are not minor. Thus, a radiator repair would not be minor because it is essential for operating a water-cooled engine. A muffler is also essential since the statutes require that cars meet certain noise levels. One section of the statute says that a person subject to the Act shall not engage in unfair or deceptive practices. Therefore, a person exempt under the rules, such as a muffler repairman, would not be subject to action by the Attorney General's office for unfair or deceptive practices unless his repair practices were designed to evade the Act.

The rules and statute provide that a minor repair facility is covered by the Act if it does anything which is classified major. It is possible to argue that those who install mufflers or shock absorbers generally provide other services, such as brake replacement and maintenance. Brake repairs are not excluded from the statute. For instance, a station which pumps gas in the front, but does tune-ups in the back, would come under provisions of the Act. For all practical purposes, there would be only a limited number of people who engaged in auto repair service in an exclusively minor area and who would not be subject to the Act.

The Act requires not only the registration of repair dealers, but the certification of mechanics.[119] This is because a motor vehicle has more than 15,000 parts, and mechanics work on new models every two or three years. One concern is safety, because it transports human beings. A great number of accidents are attributed to vehicles which are defective because of a manufacturer's defect, the consumer's failure to take care of his car, or because the mechanic working on the car is so incompetent that he did not know what he was doing. Automotive repair is substantially affected with a public interest in terms of competence. The legislature recognized possible problems of creating barriers to entry into the marketplace. However, such questions of competion were overweighed by a perceived public interest.

The legislature required tests to determine competence, and the tests were left to the administrative agency to devise. However, the administrative agency generally uses tests developed by the National Institute for Automotive Service Excellence (NIASE).[120] The Act provides that if a person is not qualified as a certified mechanic, he can be given a trainee permit to work under the supervision of a certified mechanic. In addition, the trainee can be compelled to attend training programs before certification by the administrative agency. The administrator can, by rule, establish a mechanic trainee training program. He can also establish continuing programs for master or specialty mechanics to keep abreast of changes.

Three lawsuits were filed as a result of auto repair investigations conducted in 1973 by the Attorney General. These auto dealers were charged with license violations. One was settled on a probationary agreement. Another resulted in a suspension which eventually turned into a probation. The third was the previously cited case dealing with vicarious liability which is now on appeal; the trial court suspended the latter's license for fourteen days. The major automotive manufacturers provide in their franchise contracts that the franchise is terminated if it is closed for more than seven days through forces other than strikes or riots. So, if a dealer's license is taken for more than seven days, he is out of business. This is an important reason why the auto dealers vigorously oppose such enforcement efforts.

The manpower and expense required to conduct Michigan's auto repair investigations were not prohibitive; approximately $8,000 to $9,000 was spent. State-owned vehicles were used, so the only cost was that of hiring an independent testing laboratory. Generally, new cars were used in the tests, because the newer the car, the less likely that anything was wrong with it. In some instances, the investigators rolled the odometer past the 12,000 mile warranty cut-off. This was possible because the state is exempt from the odometer alterations statute, and did not do it with fraudulent intent to dispose of the vehicle. One reason for rolling the odometer up was that, if the car were taken for repairs while it was under warranty, the repairman would fix it, but the owners would not be charged for it, nor see the bill. The warranty also would disclose that the state owned the car. Out-of-state license plates were used in the study to test whether the repair facility would discriminate against travelers from other states. Volunteers from consumer organizations drove the cars, along with Attorney General's investigators.

All of the facilities tested were given the same explanation by the drivers; this had been worked out by the expert.[121] If the mechanic was competent, the driver's description of the symptoms would lead him to conclude that the problem was the defect that had been induced. If the mechanic did not know what he was doing, he usually had to go through an elaborate and expensive diagnostic process. The induced-defect was a spark plug wire which had been shorted out; no major repairs were necessary.

Michigan's auto repair law provides different enforcement roles for the Attorney General and the Secretary of State. The Secretary of State, as administrator, must prove a past violation of the statute. He may not suspend or deny a license to someone he believed is about to engage in a prohibited act. The Attorney General's role is to investigate repair facilities that

are about to engage in a probibited act.[122] An analysis of the effectiveness of these enforcement roles must await the outcome of the state's appeal of a Michigan appellate court decision. The latter affirms a trial court's order that temporarily enjoins enforcement of the Michigan auto repair law by state officials, pending a determination on the merits of the Act. The injunction does not preclude private actions seeking redress for automotive repair abuses. Of more importance is the fact that neither court held any of the provisions of the Act unconstitutional. Therefore, the substantive provisions of the statute are not in question.[123]

The Act provides a unique administrative remedy. It authorizes the Michigan Secretary of State to fashion relief appropriate to the circumstances. This means the administrative agency can act remedially, short of revoking a license. It can, for example, order restitution to consumers.[124]

The Act was recently amended to delete a provision that required every service station engaging in services of more than a minor nature to be bonded in the amount of $10,000. The Service Station Dealer's Association of Michigan had complained that a great number of its members would not be able to get bonded. It claimed that service stations in the inner city of Detroit were operated by ex-convicts who did not have substantial assets. The bonding provision would have authorized courts to order surety companies to make restitution to consumers for unfair or deceptive acts when service stations were unable to do so. The inner city service stations were unable to provide sound collateral for the sureties. They therefore, could not obtain bonding. Eliminating the bond requirement erased one of the artifical barriers from doing business.

The estimate provision of the Act was amended in order that repairmen might exceed written estimates without the consent of consumers, but only to the extent of 10 percent or $10, whichever was less. The original provision would have precluded mechanics making repairs in excess of the estimate without the owner's authorization. Auto dealers charged that requirement would create incredible public relations problems and inconvenience consumers. The Attorney General did not successfully contend that public relations problems would be minimized because consumers would be allowed to knowingly and intelligently waive their right to an estimate.

Some provisions of the Michigan statute may be of particular interest to other states. For example, the Act provides clear and concurrent authority on the Attorney General and the Secretary of State to enforce the law; duplication of effort is avoided since their enforcement roles differ. Secondly, the administrative agency is empowered to award affirmative relief to consumers. Thirdly, the Act partially disposes of mechanic's lien abuse, since such liens may not be enforced if a facility violates the Act or a substantive rule. Finally, the Secretary of State is required by law to inform the public of their rights.[125]

The Attorney General's consumer education program would be supplemented by requiring the Secretary of State inform the public of their rights. Diagnostic centers would also augment the consumer education program. These centers would be operated on a non-profit basis, and to that extent, they would provide consumers inexpensive advice about car maintenance.[126]

Conclusion

This report has reviewed the need for comprehensive auto repair laws, as well as the problems encountered in their adoption. It has also highlighted the major statutory approaches designed to alleviate automotive repair fraud and incompetence. In addition, this report reveals a startling discrepancy, in that many Attorneys General cite automobile repair complaints as their major and most persistent category of consumer complaints; however, few states have taken concrete action, such as adopting auto repair laws or rules and regulations specifically tailored to this problem area. It is hoped that existing auto repair laws will provide a foundation upon which others may build and improve.

FOOTNOTES

FOOTNOTES

Chapter 1. Statement of Problem

1. Office of Consumer Affairs, STATE CONSUMER ACTION 14-22 (1974).

2. The Council of State Governments, 1971 SUGGESTED LEGISLATION 97 (1970).

3. Wisconsin Legislative Reference Bureau, AUTO REPAIR REGULATION: A STATUS REPORT, Informational Bulletin 74-IB-10, 1 (October, 1974).

4. Letter from Assistant Attorney General James A. Hammerschmidt, Ohio Attorney General's Office, Consumer Fraud and Crime Section, to Christopher M. Wyne, December 5, 1974.

5. Wisconsin Governor's Council for Consumer Affairs, GREEN BAY AUTO REPAIR SURVEY, March 17, 1974.

6. Detroit Testing Laboratory, DEALER SURVEY OF COSTS AND REPAIRS ON STATE CARS WITH INTERNAL DEFECTS, Report No. 3120218-E (November 26, 1973).

7. Comment, Proposed Legislation for the Licensing of Automotive Repair Facilities and Mechanics in Texas, 7 ST. MARY'S L.J. 228 (1975).

8. "Unless the state requires a judicial hearing prior to the sale to determine the validity of the lien, the car owner's only remedies are either to seek an injunction or to sue the repair shop for conversion." Id. at 231.

9. Fuentes v. Shevin, 407 U.S. 67 (1972) (Personal property seized); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) (wages garnished). But see Mitchell v. W. T. Grant Co., 416 U.S. 600 (1974).

10. 105 Cal. Rptr. 667,680 (Super. 1973).

11. 11 Cal.3d 146, 113 Cal. Rptr. 145, 250 P.2d 961 (1974).

12. 11 Cal.3d at 154-156, 113 Cal. Rptr. at 145-51, 520 P.2d at 466-68.

13. Supra note 7 at 232.

14. See CAL. BUS. & PROF. CODE ANN. § 9884.16 (West 1975); and MICH. COMP. LAWS ANN. § 257.1331 (Supp. 1976).

15. Lynch v. United States, 292 U.. 571, 579-80 (1934).

Chapter 2. Common Law Remedies and Their Inherent Problems

16. Foy v. Taussing, Inc., 220 So.2d 229, 240 (La. Ct. App.), writ denied, 222 So.2d 884, cert. denied, 396 U.S. 947 (1969).

17. See Sheldon Livestock Co. v. Western Engine Co., 301 N.E.2d 485,489 (Ill. Ct. App. 1973); West Esplanade Shell Serv., Inc., v. Breithoff 293 So. 2d 595, 597 (La. Ct. App. 1974). Annot. 92 A.L.R. 2d 1408 (1963).

18. See Hutchison v. Ball, 47 S.E.2d 913 (Ga. Ct. App. 1948); Winker v. SAR Mfg. Co., Inc., 508 S.W.2d 107, 109 (Tex. Civ. App. - Houston (1st Dist.) (1974, no writ).

19. See, e.g., Thompson Motor Co. v. Story, 1 S.E.2d 213 (Ga. Ct. App. 1939); Hoye & Williams v. Farmer, 38 So.2d 810 (La. Ct. App. 1949).

20. Supra note 1, at 239.

21. Sheldon Livestock Co. v. Western Engine Co., 301 N.E.2d 485, 489 (Ill. Ct. App. 1973); Myers v. Ravenna Motors, Inc., 468 P.2d 1012, 1013 (Wash. Ct. App. 1970).

22. 137 N.E.2d 504, 507-508 (Ill. Ct. App. 1956); see Spolter v. Four-Wheel Brake Service Co. et al., 222 P.2d 307, 313 (Cal. Ct. App. 1950).

23. Bereman v. Burdolski, 460 P.2d 567, 569 (Kan. 1969); see Hayes v. Viola, 179 So.2d 685, 689 (La. Ct. App. 1965).

24. Supra, note 2, at 597.

25. See Hoye & Williams v. Farmer, supra note 4;

26. E.g., Foy v. Ed Taussing, Inc., supra note 1 (plaintiff and her children received personal injuries); Range v. Interstate Diesel, Inc., 215 N.W.2d 790 (Minn. 1974) (damage to automobile due to negligent repairs).

27. Comment, Consumer Protection New Hope Following Failure of Civil and Criminal Remedies, 66 J. CRIM. LAW & CRIMINOLOGY 271 (1975).

Chapter 3. Industry Responses

28. See generally Hearings on the Automotive Repair Industry Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary, 90th Cong., 1st Sess., pt 1 (1968); id, 91st Cong., 1st Sess. pt. 2 (1969); id., 91st Cong. 1st Sess., pt. 3 (1970); id., 91st Cong., 2nd Sess., pt. 4 (1970); id., 91st Cong., 2nd Sess., pt. 5 (1971); id., 91st Cong., 2nd Sess., pt. 6 (1971).

29. Department of Health, Education and Welfare, Office of Consumer Affairs, CONSUMER AUTO REPAIR PROBLEMS - A STUDY REPORT FROM THE STATES 34-36 (June, 1974).

30. Telephone interview with Beth Eakins, Systems and Research Coordinator, National Institute for Automotive Service Excellence, March 3, 1976.

31. Supra note 3, at 9.

32. Id.

33. Supra note 29, at 34.

34. Telephone interview with Allen Marlette, Director of National Automobile Dealers Association - Automotive Trade Association Managers, March 3, 1976.

35. Supra note 29, at 35-36.

36. Note, Regulation of Automotive Repair Services, 56 CORNELL L. REV. 1010, 1028 (1971).

37. Supra note 29, at 18.

38. Wisconsin Legislative Reference Bureau, supra note 3, at 3. The proposed rules would have required dealers to provide written estimates; notify the owner of the cost of authorized repairs exceeding the original estimate by a specified percent; give customers an itemized list of repairs performed and specify whether parts installed were new or rebuilt; a statement of labor charges; and the name of the repairman.

39. WIS. ADM. CODE § Ag 132 et seq. (1975).

40. Id. § Ag 132.01(2).

41. CP107 - Motor Vehicle Repair Work. The rule would have required automotive repair shops to provide a written estimate and post a sign conspicuously stating the customer's rights on repair work.

42. Letter from Assistant Attorney General Lee Suskin, Consumer Fraud Division, Vermont Attorney General's Office, to the author, February 18, 1976.

43. See Department of Legal Affairs v. Lee Rogers d/b/a American Holiday Association, Case No. 47,502 (Florida Supreme Court, February 25, 1976); State v. Lambert, 68 Wis.2d 523, 229 N.W.2d 622 (1975); and Ritholz v. Ammon, 240 Wis. 578, 4 N.W.2d 173 (1942).

44. California and Hawaii have established regulatory boards composed of members from the automobile industry as well as the public. See summary of statutory approaches infra.

Chapter 4. Statutory Approaches

45. The Commissioner may suspend or revoke the registration of any motor vehicle repair shop if the registrant "has willfully failed to comply with any of the provisions of this article or the rules and regulations of the commissioner promulgated hereunder ...." N.Y. VEH. & TRAF. LAWS § 398(e)(1). (McKinney Supp. 1976) (Hereafter referred to as New York Motor Vehicle Repair Shop Registration Act.)

46. Supra, note 29, at 22-24.

47. CAL. BUS. & PROF. CODE ANN. § 9880-9889.20 (West 1975); CONN. GEN. STAT. ANN. § 14-51 et seq. (1970); HAW. REV. STAT. § 437B (Supp. 1975);

MICH. COMP. LAWS ANN. § 257.1301 et seq. (Supp. 1976); N.Y. Motor Repair Shop Registration Act § 398-c (McKinney Supp. 1976).

48. See Monaghon, The Constitution and Occupational Licensing in Massachusetts, 41 B.U.L. REV. 157, 164-65 (1961).

49. Speech to National Association of Attorneys General Winter Meeting, Hot Springs, Arkansas, December 12, 1974.

50. Federal Trade Commission, Staff Report, Regulation of the Television Repair Industry in Louisiana and California (1974).

51. Note, Due Process Limitations in Occupational Licensing, 59 VA. L. REV. 1097, 1098 (1973).

52. Note, Michigan Motor Vehicle Service and Repair Act of 1974, UNIV. MICH. J. LAW REF., 402, 422 (1975).

53. MICH. COMP. LAWS ANN. § 257.1312.

54. Id. § 257.1313.

55. CAL. BUS. & PROF. CODES § 9884.7(1)(e) (West 1975).

56. N.Y. Motor Vehicle Repair Shop Registration Act § 398(e)(1)(h) (McKinney Supp. 1976).

57. National Association of Attorneys General, Committee on the Office of Attorney General, LEGAL AND ECONOMIC ISSUES IN PRICE MAINTENANCE AND OCCUPATIONAL LICENSING 47 (June, 1975).

58. Supra note 7, at 224.

59. The Legislative Research Division, Institute of Government, the University of Georgia, AUTO REPAIR REGULATION: AN ANALYSIS 67 (February, 1970).

60. Supra, note 27, at 272.

61. Supra note 47.

62. CAL. BUS. § PROF. CODE § 9882.

63. Id. § 9882.6.

64. Id. § 9886.3.

65. Id. §§ 9884.7-9884.10.

66. Id. § 9884.16.

67. Id. § 9884.18.

68. CONN. GEN. STAT. ANN. §§ 14-51 et seq. (1970).

69. 29 Conn. Supp. 330, 286 A.2d 866 (Super. Ct. 1971).

70. CONN. GEN. STAT. ANN. § 14-52 (Supp. 1976).

71. Id. § 14-64.

72. HAWAII REV. STAT. § 437B (Supp. 1975).

73. Id. § 437B-4.

74. Id. §§ 437B-23(c); 437B-24; and 437B-9.

75. Id. §§ 437B-13-17.

76. Id. §§ 437B-12; 437B-20-21; and 437B-25.

77. Letter from John N. Ruth, Jr., Chief Consumer Protection Division, Maryland Attorney General's Office to Patton G. Wheeler, February 27, 1976.

78. MD. ANN. CODE COM. LAW § 14-1001 et seq. (1975).

79. Id. §§ 14-1002(a)(1); 14-1002(a)(2); 14-1004; and 14-1003.

80. Id. §§ 14-1006; 14-1002(a)(2); 14-1009; and 14-1005.

81. NEV. REV. STAT. § 487.005(1) (1973).

82. Id. § 487.035(3).

83. N.H. REV. STAT. ANN. § 269:8 (Supp. 1975).

84. Id.

85. Letter from Deputy Attorney General William C. Hyland, New Jersey, Division of Law, Consumer Affairs Section, to Patton G. Wheeler, March 1, 1976.

86. Id.

87. N.Y. Motor Vehicle Repair Shop Registration Act § 398-c(1) (McKinney Supp. 1976).

88. Id. § 398(d).

89. Id. §§ 398(f)(3) - 398(f)(4).

90. R.I. GEN. LAWS ANN. § 5-38-1 et seq. (Supp. 1975).

91. Id.

92. Letter from Chief Staff Investigator Robert Cottle, Rhode Island Department of Attorney General, Division of Consumer Protection, to Patton G. Wheeler, February 2, 1976.

93. Letter from Assistant Attorney General William T. Evans, Utah Attorney General's Office, Consumer Protection Division, to Patton G. Wheeler, January 23, 1976.

94. WIS. ADM. CODE §§ Ag 132.02 and Ag 132.03(5).

95. Id. § Ag 132.05.

96. Id. § Ag 132.06.

97. Id. § Ag 132.07.

98. Letter from Assistant Attorney General Jean R. Usanga, Consumer Protection/Business Regulations Division, Idaho Attorney General's Office, to Patton G. Wheeler, January 26, 1976.

99. Letter from Assistant Attorney General Michael A. Feldman, Consumer Fraud Division, Maine Department of the Attorney General, to Patton G. Wheeler, January 23, 1976.

100. Letter from Investigator R. G. Cornthwaite, Consumer Protection Division, Oregon Attorney General's Office, to Patton G. Wheeler, February 10, 1976.

101. Letter from Assistant Attorney General Jodi Lehman, Consumer Protection Division, Texas Attorney General's Office, to Patton G. Wheeler, January 23, 1976; see DALLAS CITY CODE art. IX, §§ 50-113 to 50-130 (1974).

Chapter 5. Contrasting Approaches to Auto Repair Fraud

102. OHIO REV. CODE ANN. § 1345.01 et seq. (Supp. 1974).

103. This interview was conducted in Columbus, Ohio, on February 23, 1976.

104. The Michigan interview occurred in Lansing, Michigan, on February 24, 1976.

105. Case No. 7510051, (Common Pleas Court, Hamilton County, 1976).

106. Ohio Legislative Service Commission, Committee to Study Consumer Protections and Problems, CONSUMER PROBLEMS AND PROTECTION, Staff Research Report No. 101, (January, 1971).

107. OHIO REV. CODE ANN §§ 1345.02-03.

108. OHIO REV. CODE ANN. § 1345.05.

109. The principal challenge to the legislation is that it lacks the signature of the presiding officer of each house as required by Ohio Constitution art. 11, § 17.

110. Ohio Substantive Rule COco-3-01.05A was adopted by the Director of Commerce pursuant to OHIO REV. CODE § 1345.05(B).

111. Creeger v. Betz, No. 7301 (Ct. App. 6th District, Lucas County, 1976).

112. "Supplier" means a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumber transactions, whether or not he deals directly with the consumer. OHIO REV. CODE § 1345.01(C).

113. Section 1345.01(A) defines a "consumer transaction" as a sale, lease assignment, award by chance, or other transfer of an item of goods, a service, franchise, or an intangible except those transactions between ... attorneys or physicians and their clients or patients, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things.

114. MICH. COMP. LAWS ANN. § 257.249(d) (1949).

115. Van Dyke Dodge, Inc. v. Secretary of State, ___ N.W.2d ___ (1976).

116. The Department of State, Bureau of Automotive Regulation promulgated General Rules relating to motor vehicle repairs and facilities. §§ 257.101 to 257.170. The rules became effective March 1, 1976.

117. MICH. COMP. LAWS ANN. § 257.1323.

118. For detailed listing see R 257.111 - R 257.112.

119. MICH. COMP. LAWS ANN. § 257.1305.

120. See Chapter 3 supra.

121. Detroit Testing Laboroatories, Inc. was the Michigan expert.

122. MICH. COMP. LAWS ANN. §§ 257.1322 - 1323.

123. Automotive Service Council of Michigan, Inc.; Ramsey Collision v. Richard Austin, Secretary of State as Administrator, ___ N.W.2d ___ (1976).

124. MICH. COMP. LAWS ANN. § 257.1321.

125. Id. §§ 257.1309 and 257.1323.

126. The Motor Vehicle Information and Cost Savings Act, Public Law 92-513, October 20, 1972 authorizes the Department of Transportation to establish diagnostic inspection demonstration centers to test for compliance with federal automobile safety standards and air pollution emission standards. The first diagnositc clinic was established in Missouri. In a letter date May 7, 1973 to Mr. Douglas R. Carlson, Vice Chairman Consumer Protection Committee, Harvey M. Tettlebaum, Chief Counsel Consumer Protection Division wrote:

> In St. Louis we have found, since the establishment of the AAA diagnostic center, that auto repair frauds have diminished significantly. At a modest cost ($17.50 for members and $20.00 for non-members) you can take your car to the clinic and have it completely inspected. The sophisticated equipment in the center is able to detect any defect in the automobile down to a loose screw. Also, the clinic

will provide, at a lower cost, inspections of specific portions of the automobile. All information is computerized and the diagnostic center has contracts with the United States Department of Education and the United States Environmental Protection Agency to provide them statistical information. The St. Louis diagnostic clinic was the facility which first provided the Department of Transportation with the information from which it determined that motor mounts on certain General Motors automobiles were defective and the automobiles in question were required to be recalled.

If a significant number of States were to take advantage of the Federal funding under Title III on the Act and establish diagnostic centers, I believe the information gained therefrom would not only be useful in fighting automobile repair frauds, but would give the Environmental Protection Agency a more accurate picture of the quality of automobile manufacturing in the United States.

Mr. Tettlebaum's statements suggest that diagnostic centers can provide a valuable public service function. There are factors, however, that might impair the effectiveness of these centers in resolving automotive repair fraud and incompetence. The first factor that States must consider is that when they apply for the Federal funds used to establish the centers, they have no guarantee that their applications will be approved. Second, assuming the establishment of diagnostic centers, the principal defect is that they lack enforcement authority, which means that they are unable to prosecute repair facilities that operate fraudulently and/or incompetently.

END