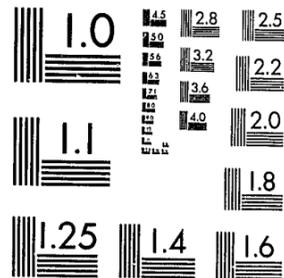


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MF 1

The State of South Carolina



AUTOMOBILE REPAIR REPORT

PREPARED BY

THE

STATE OF SOUTH CAROLINA

OFFICE OF THE ATTORNEY GENERAL

AND

DEPARTMENT OF CONSUMER AFFAIRS

76314

MAY, 1980

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U.S. Department of Justice
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INTRODUCTION: THE PURPOSE OF THE HEARINGS

Between October 29, 1979, and November 15, 1979, the South Carolina Department of Consumer Affairs and the Office of the Attorney General for the State of South Carolina conducted twelve (12) public hearings throughout the State with respect to automobile repairs and maintenance. Since 1975, the Department of Consumer Affairs has received more complaints about motor vehicles (approximately 20% of all complaints) than about any other consumer product or service. Our purpose in conducting the hearings was to learn more about the nature and source of automobile repair problems in this State and to develop information which would suggest possible solutions to many of the problems.

THE FORMAT OF THE HEARINGS

Any South Carolinian with an interest in automobile repair was invited to testify at one of the hearings. The first hearing was held in Columbia at the University of South Carolina Law Center Auditorium. The hearings concluded in Charleston at the County Courthouse. The

remaining ten (10) hearings were held at the Technical Colleges in Florence, Georgetown, Pendleton, Spartanburg, Greenville, Rock Hill, Aiken, Orangeburg and Beaufort. Although citizens who wanted to testify were asked to submit a brief written statement prior to the hearings, virtually everyone who asked to speak was given the opportunity to do so. A panel of representatives from the Department of Consumer Affairs and from the Attorney General's Office questioned those who testified at the hearings and members of the audience were permitted to ask questions insofar as time permitted. Of the 130 citizens who testified over two thirds were consumers, many of whom had more than one automobile repair complaint. In fact, 164 complaints were expressed during the hearings. Table I lists 116 complaints which were identified by the nature of the problem and 48 complaints which were identified by the type of auto repair business complained against.

I. Automobile Repair ComplaintsTable I.

	<u>Number</u>	<u>Percent</u>
A. Repetitive Repair Efforts ¹	54	33
B. Warranty Problems ²	35	21
C. Excessive Charges ³	20	11
D. Body Repair Problems	3	2
E. "Lemons"	3	2
F. Concealing Information (previously wrecked)	1	1
G. Dealer Repair (Unclassified) ⁴	37	23
H. Independent Repair (Unclassified) ⁵	11	7
Total	164	100

¹ Effort to repair same problem or different problems over a period of time.

² Manufacturer, dealer and parts warranty problems.

³ Charges considered excessive by the consumer, charges for work not done, charges exceeding estimates and fraud.

⁴ Dealer repair problems not classifiable under other headings.

⁵ Independent repair facility problems not classifiable under other headings.

Most of these complaints can be attributed to either unqualified mechanics (See A, Table I) or to the failure of a repair shop, auto manufacturer or parts supplier to honor its warranty (See B, Table I). A common complaint was that a car which had been taken to a repair facility had not been repaired at all or had been improperly repaired so that the car owner had to return the automobile to the same shop or to another shop for the same repair.

The problem of a Spartanburg resident is typical. A man who owned a 1971 model car took the vehicle to his regular mechanic because of a pressure leak in the radiator. The mechanic sublet the job to a radiator shop which then performed repairs. The man paid his mechanic \$48 and drove off. Two days later the car ran hot and the mechanic made additional repairs. The radiator continued to leak and the consumer returned the car to his mechanic again. Within three days after the mechanic presumably worked on the radiator and gave the automobile back to his customer, the radiator leaked once again. In exasperation the consumer took his car to the radiator shop to which his mechanic had originally sublet the repair. The shop repaired his radiator again, but two days later the man discovered that the radiator

still leaked. The consumer made one more trip to the radiator specialist before he took his vehicle to another garage which finally repaired his leaking radiator for \$15.

Apparently both the first mechanic and the subcontractor were unqualified to undertake radiator repairs. Moreover, the first mechanic warranted both his work and the sublet work to the consumer, but the consumer testified that he paid the mechanic more than \$135 when a simple \$15 repair was all that was necessary. If the mechanic had honored his warranty the consumer would not have had to pay more than the initial \$48. Thus, this complaint illustrates both the problem of untrained repairmen and the problem of failure to honor a warranty.

Approximately 18 of the complaints included in Table I, item B, concerned new automobiles which were still covered by the manufacturer's warranty. A lady in Rock Hill who had purchased a new full-sized car in August, 1979, tried to add oil to the engine but found that a hole had never been drilled in the engine block for adding oil. Her engine was replaced at no cost to the woman, but she thought she should have been given a new car since the new engine has developed other problems. This woman's complaint appears to be the result of negligence at the factory. Other consumers testified that their new cars had design defects

or that the dealer had not properly serviced their automobiles before delivery. In addition, most all of the consumers who complained about new cars complained of careless, unprofessional service of new car dealerships.

Other consumers complained about the high cost of repairs and receiving a bill in excess of an estimate as well as unnecessary or unauthorized repairs. One example is the complaint of a man who lives in Liberty and attended the Pendleton hearings. A new car dealership performed engine repairs on his 1973 automobile for approximately \$200. Because the engine continued to knock and fluid poured out of the engine after he paid the bill, the consumer returned the car to the service manager. When the man picked up his automobile several days later, he was presented with a bill for \$675.47 for repairs which he stated he had not authorized.

The remaining complaints included misrepresentation by dealers of the condition of, or of the equipment available on, the cars they sell, the inconvenience of being without an automobile while it is being repaired, a dealer's denial of liability for parts stolen while a car is in his possession and the failure of a mechanic to return to a consumer used parts he had replaced.

The consumers who testified at the hearings made 37 complaints (unclassified) against new car dealers but only 11 complaints (unclassified) against independent repair shops.

Adding these 37 unclassified complaints to the 15 dealer warranty complaints (see B, Table I) and the 18 manufacturer warranty complaints (see B, Table I), gives a total of 70 complaints which usually involve repairs performed by a dealer under the manufacturer's warranty. It may reasonably be concluded that new car dealers are the source of a significant number of automobile repair complaints.

II. Findings

General

The hearings reveal substantial problems facing consumers of auto repair services. These problems, when viewed in the light of national auto repair studies and the volume of complaints received annually by the Department of Consumer Affairs and the Attorney General, indicate a crying need to restore and maintain public confidence in the auto repair industry of South Carolina. Such confidence can be maintained only by removal of various obstacles which may be broadly described as falling within the following areas:

- A. Lack of communication between the consumer and the auto repair industry;
- B. Ignorance of the consumer as to maintenance and repair problems of the auto;
- C. Failure of the auto repair industry to make full and complete disclosures to the consumer;
- D. Lack of established standards for the evaluation of the qualifications of mechanics and auto repair facilities;
- E. Failure of auto manufacturers and dealers to set forth clearly and explicitly the characteristics of and limitations on new car warranties;
- F. Lack of an effective mediation system through which disputes between the consumer and the auto repair system can be resolved.

The hearings produced little indication of overt fraud in auto repair. We, therefore, believe the problems can be resolved through the good faith efforts of the consumer, the industry and state government.

In seeking to establish possible remedies for the problems that were reported at the hearings, our findings should be viewed as a mere statement of what was learned at the hearings, thus, as a supplement to the many other sources of information that must be utilized before any remedial action or recommendations are undertaken.

A. Communication

It is elementary that poor communication will cause distrust and misunderstanding in any business transaction. The emergence of large auto repair facilities has created, in many instances, an impersonal relationship between consumers and the repair industry that inhibits communication. Smaller repair facilities appear largely to have escaped this problem. They generally establish and maintain a more personal relationship with their customers.

Bigness, however, with all of its problems, is here to stay. While the good relationship between the small shops and the consumer is to be admired, many of the personal factors which influence this relationship are not and will never be characteristic of the larger facilities. Nonetheless,

the large auto repair facilities and the consumer must improve communication and establish a more satisfactory relationship. Some factors which impede communication between the consumer and the auto repair industry are:

1. The drift of the consumer from one facility to another without establishing any ties or lines of communication anywhere.
2. The large turnover in personnel in many facilities which makes difficult, or even precludes, the establishment of a sound relationship between the consumer and the facility.
3. The distance maintained in many instances between the consumer and the mechanic (e.g. the use of a non-mechanic as a service writer to deal with the consumer).
4. The inability of many consumers to articulate problems they may be experiencing with their automobile.

B. Education

The era of cheap autos and cheap gas gave rise to a negligent lack of concern by many consumers for auto maintenance and repair. As that era passes, many consumers are keeping their vehicles substantially longer than they used to! For that reason it is becoming imperative that the consumer know more about the workings of his auto and show more concern for its maintenance. Not only would increased knowledge of the automobile save money, it would also enable the owner to communicate more effectively with service writers

and mechanics. The following findings support these conclusions:

1. Unscrupulous auto repair facilities prey upon those they deem to be least knowledgeable in the workings of the auto.
2. Consumer ignorance of auto maintenance requirements lead to costly and expensive repairs that could be avoided by a more knowledgeable consumer.
3. The rise of self service gasoline stations has resulted in many consumers failing to get routine maintenance checks. This increases the frequency of repairs and decreases the life of the auto correspondingly.
4. Auto dealers make little or no effort to encourage the consumer to read and study the manual provided with each new car. Few consumers take the time to study the manual, accordingly, most manuals remain unread and tucked away in the glove compartment of the auto.
5. Consumer failure to know the manual leads to inadequate or improper maintenance which not only shortens auto life but also results in expensive repairs that could have been avoided.

[Note: The technical training centers in South Carolina offer a variety of automotive courses which could help the consumer understand and maintain his automobile.]

C. Disclosure

Legitimate consumer complaints are frequently made against facilities even though they have operated in an honest and competent manner. Many of these complaints can be attributed to failure to completely disclose to the consumer

the costs, work performed, the time required for the work and the quality or condition of replacement parts. Full disclosure by the auto repair industry could prevent many consumer complaints from arising and would enhance communication between the industry and the consumer. Our conclusion as to the need for full disclosure by the auto repair industry is based upon the following findings:

1. Many auto repair facilities are unwilling to provide estimates as to the cost of auto repair and the consumer is left with no control over the costs and little opportunity to price-shop repair facilities. Accordingly, some consumers may encounter repair expenses beyond their means to pay. Further, without a written estimate, the consumer may be unable to determine whether the vehicle to be repaired is even worth the cost of repair.
2. Some auto repair facilities will substantially exceed written or oral estimates without providing notice to the consumer or obtaining his consent to the excess charges.
3. Auto repair facilities frequently do not seek specific authorization before undertaking a particular repair job. Rather, a general authorization is usually sought which may leave the consumer with little or no remedy if he believes the costs to be excessive or unnecessary repairs to have been performed. Such general authorization is usually obtained on form contracts prepared by the repair shop for general use in all situations.

4. The problem of automobile repair facilities giving vague estimates or no estimates at all seems to result from such facilities failing to differentiate between cost of doing diagnostic work, which is sometimes hard or impossible to estimate; and the cost of doing actual repairs, including parts, which is usually less difficult to determine. As complicated diagnostic work cannot be accurately estimated, it usually is done at an hourly rate; but this is not generally explained to the customer in such a way that he can intelligently limit his overall repair expenses.

5. The vast majority of repair facilities use what is known as a "flat rate manual" to charge for repair work. These manuals give the average amount of time needed by the average mechanic to perform a specified repair on a specified car. Repair facilities using these flat rate manuals charge what is denominated as "hourly rate" for repair when, in fact, it is a flat rate. A good mechanic can usually do such repairs in less than the allotted time. This creates ill will with the customer when he realizes he is being billed for more "hours" than were actually taken for the repair.

6. The use of flat rate manuals in automobile repair facilities encourages speed rather than quality in repairs.

7. Under the South Carolina Mechanic's Lien laws, an automobile repair shop has the right to retain possession of a repaired vehicle until the customer pays in full for the cost of repairs; if such repairs were not authorized or greatly exceed the estimated cost, the customer still must pay for them to regain possession of his car and then seek his remedy in the courts.

8. The failure of most repair facilities to return replaced parts to the consumer upon the completion of the auto repair work often leads to disputes with the consumer as to whether replacement was necessary or even performed at all.

9. There is no uniformity in the use of invoices to show with precision and clarity the nature of the work performed and the identity of any parts replaced. Such invoices often are written in an illegible handwriting and parts are identified by meaningless numbers only. The consumer may therefore be left without written proof as to the work performed.

10. Warranties of labor or parts are not always clearly indicated to the consumer. The failure of an auto repair facility to make clear any express warranties leaves the consumer uncertain as to his remedies in the event of faulty replacement parts or if the work performed does not correct the problems.

11. There is at present no standard rating system for parts in the automobile repair industry. Therefore, customers are unable to determine the quality of parts used in repairing their automobiles. Thus, they are unable to tell if they have been charged a high price for poor quality parts, and they are unable to intelligently decide whether a lower quality at a lower price would be adequate.

12. Repair facilities generally do not disclose whether there is a mark-up on parts or work subcontracted out, and if so, how much. Where there is a set prorata mark-up for such parts there is no economic incentive for the shop to keep the price down.

13. Instances have occurred where a new car dealer has removed a part from a new car to fix the car he has sold and later replaced the part on the new car without disclosing the fact to the purchaser of that car. Further, new car dealers have sold vehicles which have been damaged on the lot or in transit without disclosing such damage to the purchaser.

14. Used car dealers have sold cars which have been badly wrecked or "totaled" without revealing this fact to the purchaser. Other used car dealers have sold automobiles whose odometers have been rolled back or have rolled over the hundred thousand mile mark without revealing this information to the purchaser.

D. Competence

Efforts to establish standards for determining the ability level of auto mechanics have been minimal in this State. Professional organizations such as the Automotive Service Council of South Carolina have limited impact upon the repair industry because of the relatively small number of members. There is no apparent concerted effort within the industry to upgrade the ability of mechanics in general. While a national certification program for mechanics has been established by the National Automotive Institute of Service Excellence (NAISE), the efforts of the auto repair industry to promote certification of mechanics appears to be insubstantial. New car dealers have access to factory training programs through which they can upgrade the competence of their mechanics. The

degree of participation in such training programs appears to be dependent upon the inclination of the individual dealer. The term "factory trained mechanic" does not appear to assure that the mechanic has received training to work on the current model car.

A repair facility can be no better than the quality of its mechanics. In the absence of widely used certification and training programs, there can be little basis for judging the relative merits of a given auto repair facility other than trial and error. Such a method of finding competent mechanics and good repair facilities is clearly unsatisfactory. We submit our findings as follows:

1. The state vocational training centers provide a readily available and accessible means for the auto repair industry to upgrade the quality of mechanics in South Carolina.
2. There are no existing standards for the use of the term "mechanic." Accordingly, the term is virtually without meaning and can be outright deceptive to the public as its use is tied neither to training, experience or other qualifications. The unrestricted use of "mechanic" in the area of auto repair is injurious to both the consumer and the competent mechanic.
3. Low salaries and poor working conditions result in a high turnover rate in many auto repair facilities with a substantial number of mechanics actually leaving the auto repair industry every year. The offering of sufficient incentive to auto mechanics to remain in the repair field should be an industry priority.

4. If certification programs for mechanics are to be beneficial for the consumer and the auto repair industry, a concerted and forceful effort must be undertaken to expand certification within the industry and to promote its usefulness as a standard for evaluating the competence and qualifications of mechanics.

5. There are no effective existing remedies against incompetent mechanics other than costly and time consuming litigation. The only existing sanctions of private organizations against incompetent or unethical mechanics is expulsion from the organization. Such expulsion would not impede the mechanic from continuing the acts or practices which led to the expulsion or to obtaining employment in other repair facilities.

6. Auto mechanics will be able to maintain a high degree of professionalism only if effective ethical guidelines are established and enforced.

7. Some auto repair facilities undertake work for which they neither have the proper equipment nor the qualified personnel.

8. Auto manufacturers could make their training schools more open and accessible to non-dealer mechanics. Such action would provide for better trained mechanics without injury of any consequence to auto dealers.

9. The present system does not encourage experienced mechanics to take time to help or teach beginning mechanics in the manner of an apprenticeship because a good mechanic is able to work fast and is paid only for the work he has done. Since the term "mechanic" is undefined and anyone can use it, there is no difference between beginning mechanics and experienced mechanics such that an experienced mechanic would have to supervise the work of a beginning mechanic.

E. New Car Warranties

Complaints as to conditions of and limitations on new car warranties were heard repeatedly throughout the auto repair hearings. While a few of the complaints may have been frivolous, most appeared to be meritorious and largely unresolved. The consumers are frequently led to believe through sales talk that they will be getting a full warranty with their new car. Probably few auto salesmen could adequately explain to a consumer the distinction between a full and limited warranty. Likewise, there will be few consumers who understand the limitations of the warranty on their new car. From this situation, many disputes arise as to what is or is not covered by the warranty. As to new car warranties, we make the following findings:

1. New car warranties are written in a complex, legalistic manner which makes their terms and provisions difficult to understand by the average consumer.

2. Customers are sometimes told that a particular repair is covered by a warranty only to find that after the repair has been done by a dealer that it is not covered by the warranty and that he must pay what is often a substantial amount of money.

3. Warranties require the consumer to utilize "authorized" repair facilities which may be inferior to independent facilities.

4. There is a widely held belief by consumers that auto dealers discriminate against warranty work. This belief is reinforced by a reluctance on the part of some new car dealers to perform warranty work on vehicles they did not sell.

5. Ample reason exists to conclude that many independent garages could perform warranty work as well as any "authorized" dealer without increasing the cost of such work to the manufacturer. The consumer could accordingly be given broader alternatives to warranty repairs than are now available to him.

6. The lack of the use of a new auto while it is undergoing warranty repair may cause great hardship and financial burden for which the owner has no adequate remedy.

7. In view of the very limited alternatives available to the consumer for warranty work, auto dealers have little reason to be courteous to him or to perform his work quickly. This discourages the consumer from seeking warranty repairs to which he is entitled.

8. The consumer offices of the auto manufacturers appear to offer little or no actual assistance to the consumer in warranty controversies.

9. The giving of a full warranty by auto manufacturers would eliminate many of the problems now prevalent between dealers and consumers as to warranty work, especially by allowing customers to recover incidental and/or consequential damages.

10. Defects which are normally covered by warranties may fall into one of two categories: defects in design and defects in manufacture. There is presently no agency which compiles information which would indicate nonsafety related design defects.

11. Auto manufacturers give what is called "hidden warranties" which take the form of authorization from a factory representative for the dealer to make or repair a possible design defect in a specific instance. The problem with such "hidden warranties" is that they often depend on how vocal or persistent the customer is in his complaint or how much influence he has with the dealer. Another form of "hidden warranties" are warranties which are required by law but which the customer is not informed of.

12. Defects in either design or manufacture are usually covered under new car warranties for a specific number of miles or a specific number of months. The dealer will normally work on defects up to the warranty cut off time. Many dealers and manufacturers act as if they have no continuing obligation to repair defects after the warranty period even if they were not repaired during the period despite repeated efforts by the dealer or manufacturer.

13. Occasionally a new car is put out which has so many manufacturing defects which are so pervasive the whole car could or should be considered defective, yet it is very rare that a manufacturer will replace such a car with a new car even when such problems are apparent immediately.

F. Mediation

Few of the complaints heard at the auto repair hearings were not susceptible to resolution through mediation or arbitration. Unfortunately, there is no existing mechanism of any significance provided by the auto repair industry for prompt and efficient response to consumer complaints. While at least one auto manufacturer is experimenting with an arbitration board to resolve

disputes against it and its dealers, the only statewide mediation effort of any significance currently available is provided by the Department of Consumer Affairs. If complaints can be resolved by the consumer and the auto repair facility without resort to third parties, obviously they should be. Nonetheless, a third party mediation or arbitration will be necessary in many cases if costly and time consuming litigation is to be avoided. We submit the following:

1. The Department of Consumer Affairs can mediate a dispute between a consumer and an auto repair facility only if both parties are amenable to the mediation effort. The Department can provide little or no assistance to the consumer, no matter how valid his complaint, if the auto repair facility rejects its mediation efforts.
2. Independent auto repair organizations do not advertise or promote any mediation or arbitration programs. While some such programs are supposed to be in existence, few, if any consumers have ever heard of them. Unless they are aware of such programs, obviously they cannot make use of them.
3. Absent an effective mediation and arbitration program, the only remedy available to the consumer is litigation. The costs of litigating a controversy with an auto repair facility would frequently exceed the repair costs. Accordingly, the consumer is forced to choose between principle and stark economics.
4. An effective arbitration and mediation system must have the support of both the auto repair industry and consumers. Such support is dependent upon both parties having input into the system and maintaining confidence in its fairness.

5. The consumer could place greater trust in a repair facility if he knew that should a dispute arise, it could be resolved through a fair and impartial mediation or arbitration system.

6. Auto repair facilities could agree to submit any consumer disputes to arbitration and mediation if they are assured of protection from frivolous or non-meritorious complaints.

7. A sound and effective private system of arbitration and mediation could minimize the role of government in the area of auto repair.

III. Existing Legal Situation

A. States

As of May, 1979, twenty-five states, the District of Columbia, two counties and one city had passed some form of legislation or promulgated regulations affecting the automobile repair business. Automotive Parts and Accessories Association, May, 1979, Summary of Auto Repair Legislation and Regulations of the 50 States. The most common form of regulation involves disclosure of information regarded as crucial to consumers entering auto repair transactions. All twenty-five states currently regulating auto repair trade practices have some form of disclosure requirement. These requirements generally include a written estimate for all parts and labor, prior authorization by the consumer for charges exceeding the written estimate, the return to or inspection of replaced parts by the consumer, and written invoices describing all parts and labor and indicating whether replacements parts were new, used, rebuilt and so on.

In addition, Arkansas, Illinois, Kentucky, Maine, Missouri, New Mexico and North Carolina had some form of disclosure legislation pending in 1979. The majority of the twenty-five states which had addressed the matter have enacted legislation; in six, rules have been promulgated by state agencies.

Six states and the District of Columbia currently license businesses engaged in the repair of automobiles. Four additional states had a license requirement pending in their legislature during 1979. Several jurisdictions exempt businesses performing only minor repairs and Rhode Island apparently licenses only body shops.

Two states and the District of Columbia currently require mechanic certification by legislative enactment. In 1979, the Illinois Attorney General's Office was considering the promulgation of a regulation to the same effect. Hawaii, one of two states with a mechanic certification requirement, has a "grandfather clause" exempting mechanics from the certification test upon proof of their having been engaged in the trade for at least two years prior to the effective date of the act.

Finally, several states have what appear to be commissions made up of consumer and business representatives whose function is to attempt informal dispute resolution, to make recommendations concerning regulations, to comment on practices of the industry, etc.

B. Federal

On the federal level there appears to be no comprehensive regulation of the auto repair industry. No doubt the

formidable administrative task of monitoring such an ubiquitous industry accounts for the reluctance of any federal agency to undertake this challenge.

Several agencies, notably the Federal Trade Commission, the Department of Health, Education and Welfare, Office of Consumer Affairs, and the National Highway Traffic and Safety Administration have conducted studies which point out the widespread and consistent consumer dissatisfaction with the automobile repair business. See, e.g., U.S. Department of Health, Education and Welfare, Office of Consumer Affairs, Top Twenty Complaints 1974, 1975, 1976, 1977 (complaints involving automobiles top the list; in 1977 by more than double the number of complaints received concerning the next most frequently complained-of industry). While the Federal Trade Commission has for years promised to promulgate trade rules concerning the industry, to date no such regulations are in effect. It would appear that such regulation by the FTC is unlikely in the near term. Hearings on auto repairs held by the subcommittee on Consumer Protection and Finance of the House of Representatives, produced an extensive report recommending, inter alia, that "states adopt 'good faith disclosure' laws." Automobile Repairs: Avoidable Costs, Staff Report, House Subcommittee on Consumer Protection and Finance, 96th Cong. 1 Sess. IX, May 17, 1979.

C. South Carolina

The State of South Carolina currently has no law or regulation directly and specifically addressing the auto repair industry. Various statutes affect the industry indirectly such as licensing and inspection statutes, finance acts, lien laws, etc. The Unfair Trade Practices Act, Section 39-5-10 et seq., prohibits unfair trade practices in the auto repair industry as well as in other industries. No regulations currently exist, however, delineating those practices constituting violations of the Act.

Several general provisions of South Carolina law affect the problems of automobile repairs in this state. Implied warranties under the Uniform Commercial Code would apply to any labor and parts used in repairs but repair facilities generally limit their liability under these warranties by a pre-printed "waiver". General contract law requires that parties live up to the terms of the contract. This would mean that if the repair facility undertakes to repair a certain problem for a certain price at a certain time, failure to do so would constitute a breach of the contract. Liability for breach might include any consequential damages within the contemplation of the parties. General tort law would make the mechanic responsible for any negligent repairs done on the car. This would include consequential and incidental

damages and, possibly, punitive damages. Although res ipsa loquitur is not a doctrine applied by the South Carolina courts, circumstantial evidence can be used to show negligence or recklessness. The law of agency and bailment are available to a complaining customer to draw in the shop, dealership, or other possible responsible persons in the event that the mechanic doing the actual work does not have sufficient resources to pay a judgment.

D. Summary.

Despite being universally regarded as the single most prolific source of consumer disaffection, the automobile repair industry remains substantially free from regulation. According to the report prepared for the House Subcommittee on Consumer Protection and Finance "witnesses from all sectors voiced strong support for 'good faith disclosure' laws. Id. at 23. The Subcommittee staff strongly recommends such laws for adoption by the States." Id. Good faith disclosure laws appear to be a valuable mechanism for increasing consumer information prior to transactions involving automobile repairs. While attempts to pass such legislation have been rebuffed in a few states, it appears that the majority of jurisdictions which have considered the problem have adopted some form of disclosure requirement.

Experience with other forms of regulation is extremely limited. Only a handful of jurisdictions have either dispute resolution agencies, certification of mechanics, licensing of dealers, or listing of specific auto repair business practices which violate unfair and deceptive practices statutes. While the California statute involving disclosure, dispute resolution, state investigative capacity, licensing of shops, etc., appears to be effective and to have produced concrete benefits for consumers in that state, it has apparently resulted in the creation of a large administrative body. In other jurisdictions which certify mechanics or license dealers, reviews have been mixed. Charges that such systems operate as impediments to entry into the business of automobile repairs and that as the result of grandfather clauses such schemes are ineffective are common.

In Massachusetts the Attorney General's Office has promulgated regulations listing specific practices as per se violations of that state's Unfair Trade Practices Act. According to Massachusetts officials these regulations provide substantial benefits at relatively low administrative costs. Furthermore, by listing specifically those practices which the Attorney General's Office considers violations of the Unfair Trade Practices Act, the regulations put repair shop operators

on notice and serve to instruct the courts, resulting in an economy of judicial resources. Finally, because enforcement of the regulations is handled by the Attorney General's Office, Division of Consumer Protection, little additional bureaucracy was required.

IV. Recommendations

Most of the consumers who testified at the hearings voiced complaints or concerns about repairs attempted by new car dealerships. Unfortunately that segment of the auto repair industry chose to remain silent at the hearings, with one or two exceptions. For these reasons the hearings were less conclusive than we had anticipated. Accordingly concrete remedial recommendations should await further inquiry.

Some general suggestions, however, are in order:

(A) An industry - consumer - governmental panel should be formed and directed to study the various reports which have been made about auto repair problems; make a more formal inquiry into the problems related by South Carolina consumers at the hearings; and formulate specific remedial recommendations;

(B) The auto repair industry should promptly establish and maintain a voluntary complaint mediation and arbitration system;

(C) The auto repair industry, including auto manufacturers and the technical school system, should work together to upgrade mechanic training programs and to establish criteria for measuring and certifying the competence of mechanics in their various areas of expertise.

(D) The Attorney General should evaluate the regulations adopted in Massachusetts and other states pertaining to unfair trade practices in the auto repair trade to see if similar regulations would benefit South Carolina citizens;

(E) The public information media in this state should make a concerted and continuing effort to effectively inform consumers of the absolute necessity to know and abide by car manufacturer's recommended service and maintenance schedules and of warranty terms and conditions.

(F) The auto repair industry should improve communication with consumers by (1) having a clearer understanding about what will be repaired and at what cost, (2) by offering to return or permit inspection of replaced parts and (3) by legibly itemizing the repairs and replaced parts in words instead of numbers.

END