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PROPOSED LEGISLATION FOR THE LICENSING OF AUTOMOTIVE REPAIR FACILITIES AND MECHANICS IN TEXAS

T. POLLARD ROGERS

In recent years there has developed an ever increasing concern for consumer protection. Products liability has become a major source of litigation and the federal and state governments have responded by enacting numerous consumer-oriented statutes.¹ As a result the burden of ultimate liability is presently shifting from the consumer to the entrepreneur, and the common law doctrine of *caveat emptor* is evolving toward *caveat vendor*.² Despite the many legal theories propounded in support of this development, the overriding consideration is that industry is better able to bear the financial burden incurred by innocent consumers who may be injured by defective products.³

There are several business sectors, however, which still enjoy at least partial immunity from consumer protection laws, primarily because they involve services, as opposed to sales.⁴ In 1968 the Senate Judiciary Committee initiated hearings before the Subcommittee on Antitrust and Monopoly to investigate the recent surge in consumer complaints concerning the automotive repair industry.⁵ Repeated testimony by witnesses representing industry as well as consumer interests revealed a general level of incompetence and a prevalence of deceptive trade practices among automobile mechanics. These hearings dramatized both the inability of existing consumer law to provide adequate legal remedies and the failure of the automotive repair industry to regulate itself by means of various independent agencies.⁶

1. For example, Texas has recently supplemented its Deceptive Trade Practices Statute with a Consumer Protection Act. TEX. BUS. & COMM. CODE ANN. §§ 17.41-17.63 (Supp. 1974).

2. Comment, *Caveat Vendor: The Texas Deceptive Trade Practices and Consumer Protection Act*, 25 BAYLOR L. REV. 425, 425 (1973).

3. See Keeton, *Product Liability and the Meaning of Defect*, 5 ST. MARY'S L.J. 30, 35 (1973).

4. See, e.g., *Barbee v. Rogers*, 425 S.W.2d 342 (Tex. 1968) (optometrist charged with improperly fitting contact lenses).

5. *Hearings on Automotive Repair Indus. Before the Subcomm. on Antitrust and Monopoly of the State Comm. on the Judiciary*, 90th-91st Cong. (1968-70) [hereinafter cited as *Congressional Hearings*]. The automotive repair industry is comprised of three distinct types of facilities: (1) franchise dealers of the major automobile manufacturers; (2) independent repair shops; and (3) service stations. The usual services performed include major repairs to automobile engines and body work.

6. Two of the largest independent regulatory associations are the National Automotive Dealers Association and the Independent Garagemen's Association.

In the aftermath of these hearings, several states and municipalities have experimented with legislation requiring the licensing of automobile repair shops and, in at least one instance, the certification of mechanics.⁷ Regulation of the automotive repair industry through licensing has a two-fold purpose: It attempts to insure competent repair work by establishing minimum standards for certification of shops and mechanics, and it provides an alternative to litigation for redressing consumer grievances by creating an agency equipped to investigate and settle consumer complaints.⁸ Additionally, state licensing statutes should minimize deceptive trade practices by authorizing the state to revoke licenses when such practices are discovered.

Of the states with existing licensing statutes, only Michigan provides for both registration of repair shops and certification of mechanics, both of which are essential in order to minimize the incidence of incompetent repairs and fraudulent practices.⁹ When a statute provides for the licensing of repair shops only, the state creates merely an additional means for complaint resolution; an aggrieved consumer can find satisfaction through a state agency instead of through the courts. This method alone, however, will not adequately cope with the basic problem of mechanic incompetence. The statute must also require mandatory certification of mechanics and establish minimum standards for qualification and training facilities to provide the necessary mechanical education.

PRACTICES WITHIN THE INDUSTRY

The overall lack of quality automotive repair work, as evidenced in the senate congressional hearings, has been reported by Texas consumers as well.¹⁰ As a result, the city of Dallas has recently enacted an ordinance requiring the registration of all local automotive repair shops.¹¹ This action taken on the local level should be enlarged in effect by comparable state legislation requiring not only the registration of repair shops, but also manda-

7. CAL. BUS. & PROF. CODE ANN. § 9880-9889.21 (Supp. 1973); Mich. H.B. 5047, 77th Legis. Sess. (1974); N.Y. VEH. & TRAF. LAWS (McKinney Supp. 1974); DALLAS CITY CODE art. IX §§ 50-113 to 50-130 (1974).

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

9. Mich. H.B. 5047, 77th Legis. Sess. (1974).

10. J. Pisani, *Automotive Repair: A Study of Consumer and Repair Shop Attitudes Toward the Industry, the Performance of Repairwork and Regulation*, November 15, 1972 (unpublished thesis in University of Texas Library).

11. DALLAS CITY CODE art. IX §§ 50-113 to 50-130 (1974). During the 63rd Texas legislative session a bill was proposed, drafted after the California statute, to require repair shop registration. The bill was voted down while in committee hearings. Tex. H.B. 781, 63d Legis. Sess. (1973). United States Senator Hartke proposed a bill subsequent to the Senate Congressional Hearings which would have authorized the federal government to curtail certain federal funding to those states which failed to adopt some form of licensing statute. S. 1950, 93d Cong., 1st Sess. (1973).

tory certification of mechanics.¹²

Deceptive Trade Practices

One of the most common complaints lodged against the industry is that mechanics charge for unnecessary repairs. The mechanic may advise in his original estimate either repairs additional to those which are necessary, or he may perform work additional to that estimated, later insisting that the extra repairs were necessary and could not have been discovered earlier.¹³ In any event, the customer is helpless if he has no expertise in the field allowing him to determine whether the repairs were actually necessary.

Misleading and false advertising, commonly termed "bait and switch," is also used to attract unwary customers.¹⁴ Unscrupulous repair shops often advertise exceptionally low offers on certain repairs or services. Once the customer responds to the advertisement, he is lured into authorizing additional more expensive repair work.¹⁵ Again, it is the imbalance of bargaining

12. For a general discussion on regulation of the automotive repair industry see, Note, *Regulation of Automotive Repair Services*, 56 CORNELL L. REV. 1010 (1971).

13. In November 1973, prior to the adoption of the Michigan statute, the Michigan Attorney General conducted an investigation of repair facilities in the Detroit metropolitan area. Five automobiles were thoroughly checked by the Detroit Testing Laboratory for their mechanical fitness. The mechanics then replaced the graphite in one spark plug wire in each car with a sliver of wood which caused the engine to misfire. The wearing away of graphite is a common occurrence which is easily detected by a competent mechanic and can be repaired at a cost of about \$10. The cars were then driven to local repair shops where the driver would explain that the car was not operating properly. More than 70 percent of the new car dealerships either did not discover the defect or, after correcting the problem, made unnecessary repairs. The repair bills ranged from \$3.60 to \$49.48. 1973 MICH. ATT'Y GEN. REP., SURVEY OF COSTS AND REPAIRS ON STATE CARS WITH INTENTIONAL DEFECTS.

In 1971 the Wall Street Journal conducted a similar survey of repair shops in Dallas, Texas. Of the 12 shops sampled, three were unable to locate the defective rotor in the distributor. Six shops corrected the problem but then proceeded to make other repairs. Only one mechanic discovered the defect without charging for other repairs. The repair bills ranged from \$1.00 to \$54.60. Two shops recommended repairs of \$130.00. Wall Street Journal April 20, 1971, p. 1, col. 5.

In the fiscal year 1973-74, the California Department of Consumer Affairs recorded 16,494 complaints within its jurisdiction. Of these, 1,804 involved unauthorized repairs, 4,161 involved exceeding the original estimate and 1,093 alleged fraud. CAL. DEPT. OF CONSUMER AFFAIRS, SUMMARY OF CONSUMER COMPLAINT BRANCH ACTIVITIES (Dec. 1974).

A 1972 survey of consumer attitudes toward the automotive repair industry in Travis County, Texas revealed that 60.6 percent of those sampled felt that they had been victimized by some fraudulent or deceptive practice within a 3-year period. J. Pisani, *Automotive Repair: A Study of Consumer and Repair Shop Attitudes Toward the Industry, the Performance of Repairwork and Regulation* at 153, November 15, 1972 (unpublished thesis in University of Texas Library).

14. *Congressional Hearings*, pt. 2, at 730.

15. In 1970 the Federal Trade Commission filed a complaint against Aamco Automatic Transmission Incorporated charging that its franchises were engaged in unlawful and deceptive promotional practices. They advertised transmission adjustments for

power due to ignorance on the part of the consumer which allows such practices to flourish.

Another advantage misused by unscrupulous mechanics is their right to a creditor's lien on the automobile for the amount of the repairs or services. By enforcing the lien, the repair shop can legally retain possession of the automobile and eventually sell it at a public auction for the cost of repairs.¹⁶ Creditor's liens provide an economic lever that may operate to induce the car owner to acquiesce to the demands of an unscrupulous mechanic. 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 injunction¹⁷ or to sue the repair shop for conversion.¹⁸ The United States Supreme Court has recently held that *ex parte* prejudgment replevin statutes are unconstitutional as violative of the due process requirement.¹⁹ As a result, the California courts have struck their state's statutory garagemen's lien statute which had authorized private foreclosure, as a deprivation of property with-

\$4.50 and transmission removal for \$23.00. After dismantling the transmission the mechanic would advise the customer that his transmission needed to be rebuilt at a cost greatly exceeding what he originally intended to spend. If the customer refused, some shops would refuse to reassemble the transmission or would charge over \$23.00 for reassembling. BNA ANTITRUST & TRADE REG. REP. No. 467, at A-20 (June 23, 1970).

Another example of misleading advertisements is the "cost plus parts and labor" technique. The shop will quote a low price for certain work "plus parts and labor." The unsuspecting car owner will believe the quoted price to include parts and labor only to be surprised by an inflated bill. *Congressional Hearings*, pt. 4, at 370.

16. In Texas a mechanic can assert either a constitutional lien, TEX. CONST. art. XVI, § 37, or a statutory lien, TEX. REV. CIV. STAT. ANN. art. 5503 (Supp. 1974). In *Strang v. Pray*, 89 Tex. 525, 528, 35 S.W. 1054, 1056 (1896), the Texas Supreme Court explained that the constitutional lien is self-executing and independent of the statutory lien. *Accord*, *Brick & Tile, Inc. v. Parker*, 143 Tex. 383, 385, 186 S.W.2d 66, 67 (1945); *cf.*; CAL. CONST. art. XX, § 15 provides for a constitutional lien which only directs the legislature to enact a statutory lien. *Spenney v. Griffith*, 32 P. 974, 975 (Cal. 1893).

The major distinction between the Texas constitutional and statutory lien is that the statutory lien is possessory. *Ford Motor Co. v. Freeman*, 168 S.W. 80, 83 (Tex. Civ. App.—Dallas 1914, no writ); *Caldwell v. Auto Sales & Supply Co.*, 158 S.W. 1030, 1032 (Tex. Civ. App.—Austin 1913, no writ); *see Shirley-Self Motor Co. v. Simpson*, 195 S.W.2d 951, 954 (Tex. Civ. App.—Fort Worth 1946, no writ) (constitutional lien is enforceable without possession).

In addition, the statutory lien allows a nonjudicial sale. TEX. REV. CIV. STAT. ANN. art. 5504 (Supp. 1974). *See also* Woodward, *The Constitutional Lien on Chattels in Texas*, 28 TEXAS L. REV. 305, 308 (1950).

17. Injunctions are purely discretionary with the courts. *State v. Cook United, Inc.*, 469 S.W.2d 709, 711 (Tex. 1971); *Southland Life Ins. Co. v. Eagan*, 122 Tex. 160, 163, 86 S.W.2d 722, 722-23 (1935).

18. *See Caldwell v. Auto Sales & Supply Co.*, 158 S.W. 1030, 1032 (Tex. Civ. App.—Austin 1913, no writ); Comment, *The Application of Sniadach to Bankers and Garagemen's Liens*, 4 SW. L. REV. 285, 302 (1972).

19. *Fuentes v. Shevin*, 407 U.S. 67 (1972) (seizure of personal property); *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 342 (1969) (garnishment of wages). *But see Mitchell v. W.T. Grant Co.*, 416 U.S. 600, —, 94 S. Ct. 1895, 1906, 40 L. Ed. 2d 406, — (1974).

out notice or hearing.²⁰ These cases indicate that state and federal courts have begun to realize the inequities inherent in many statutory liens which provide creditors with an overpowering economic advantage. Automotive mechanics should have the basic protection afforded by a creditor's lien; however, the right to retain possession and foreclose on the automobile prior to a judicial determination creates an unduly harsh remedy, and in effect encourages fraudulent practices within the industry. If the statute requires notice and hearing prior to execution of the lien, not only will the mechanic have the necessary protection, but also the car owner will be given the opportunity to raise any defense, including fraud or negligent repairs, against the lien.

Although interim retention of the automobile prior to notice and hearing has been considered constitutional in California,²¹ this practice still gives an unnecessary advantage to the mechanic. One solution which would protect 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, a procedure similar to that used to secure mechanic's and materialmen's liens as provided in Article 5472c of the Texas Civil Statutes. Thus, the mechanic would be assured that his claim was protected while the customer could have the use of his automobile.

Incompetence

Although fraudulent and deceptive trade practices exist within the automotive repair industry, the major cause of consumer dissatisfaction is the overall lack of mechanic competence.²² Contributing to this problem is the ever increasing sophistication of automobile design.²³ Many of the com-

20. In *Quebec v. Bud's Auto Serv.*, 105 Cal. Rptr. 677, 680 (Ct. App. 1973) the California Court of Appeals held their garagemen's lien to be unconstitutional by stating that mere retention of the automobile violated the owner's constitutional guarantees of due process. In *Adams v. Department of Motor Vehicles*, 113 Cal. Rptr. 145 (1974), however, the California Supreme Court, sitting *en banc*, qualified *Quebec* and followed the earlier decisions of the United States Supreme Court in holding that the statute was unconstitutional due to "state action," that is, state involvement in enforcement of the lien. The interim retention without prior notice and hearing, however, was not held unconstitutional. *Adams v. Department of Motor Vehicles*, 113 Cal. Rptr. 145, 148-51 (1974).

The procedures for enforcement and disposition of the Texas statutory lien, TEX. REV. CIV. STAT. ANN. art. 5504 (Supp. 1974), are similar to those provided for in the California statute. It would appear, therefore, that enforcement of the Texas statutory lien is violative of due process while the Texas constitutional lien, TEX. CONST. art. XVI, § 37, which does require judicial foreclosure, should be considered constitutional. Compare TEX. REV. CIV. STAT. ANN. art. 5504 (Supp. 1974) with CAL. CIV. CODE §§ 3071-3072 (Supp. 1975).

21. *Adams v. Department of Motor Vehicles*, 113 Cal. Rptr. 145, 148-51 (1974).

22. See Note, *Regulation of Automotive Repair Services*, 56 CORNELL L. REV. 1010, 1014 (1971).

23. During the Congressional Hearings, witnesses testified that presently there is no adequate training for the new and more sophisticated engine designs (for example, en-

plaints alleging fraud or deception are actually induced by the work of an inexperienced or unskilled mechanic.²⁴ For example, an incompetent mechanic tends to replace parts instead of repairing them.²⁵ This practice increases the total cost of repairs and creates the impression that the customer has been overcharged, when, in fact, the mechanic simply did not possess the requisite skills to repair the part. The primary reason for the low percentage of qualified mechanics is the lack of minimum standards within the industry, consequently the only means by which the repair shop or the customer can determine whether a mechanic is competent is by reputation.

LEGAL REMEDIES

Due to the current weakness of the consumer's position compared to that of the mechanic, it is essential that the state and federal governments establish minimum standards of competence within the automotive repair industry and that all mechanics be certified according to these standards. In conjunction with mandatory certification, a governmental agency should be established for the purpose of processing consumer complaints concerning automotive repairs to provide victimized consumers with an adequate means of seeking relief.

Common Law Remedies

A consumer victimized by an unscrupulous or unskilled mechanic can maintain a cause of action based on one of several theories of recovery—negligence,²⁶ breach of contract,²⁷ breach of express or implied warranties²⁸

ergy absorbing bumpers and steering columns, and electrical fuel pumps). *Congressional Hearings*, pt. 1, at 328-29.

24. A Colorado diagnostic testing center reported that of the 5,000 automobiles that were first tested for necessary repairs and then retested after the automobile had been sent to various repair shops, less than 1 percent had been properly serviced. *Congressional Hearings*, pt. 1, at 55-56.

The Auto Club of Missouri also conducted a similar study using diagnostic equipment and reported that 35 percent of the 2,000 automobiles sampled resulted in unsatisfactory repairs. *Congressional Hearings*, pt. 6, at 3039.

The lack of competent mechanics has also created a safety hazard. For example, the California Department of Highway Patrol reported that one traffic fatality was attributable to improper brake repairs performed a few days before the accident. D. RANDALL, *THE GREAT AMERICAN AUTO REPAIR ROBBERY* at 77-78 (1972). It was also revealed that 6.4 percent of the vehicles involved in 424 accidents resulting in deaths had a mechanical defect which caused the accident. *Id.* at 147.

The Stanford Research Institute surveyed 50 accidents and reported that seven of the 13 accidents caused by brake failure involved cars which had recently received brake work service. Similarly, seven of the 18 wheel alignment cases and four of the six steering cases had been recently serviced for that particular defect. *Id.* at 81.

25. *Congressional Hearings*, pt. 1, at 89.

26. *Foy v. Ed. Taussig, Inc.*, 220 So. 2d 229, 240 (La. Ct. App.), *writ denied*, 222 So. 2d 884, *cert. denied*, 396 U.S. 957 (1969).

27. *See Sheldon Livestock Co. v. Western Engine Co.*, 301 N.E.2d 485, 489 (Ill.

or fraud.²⁹ The cumbersome burden of proving the essential elements of each of these causes of action rests on the consumer. In *Foy v. Ed Taussig Inc.*³⁰ the defendant repairman was held liable for his negligent failure to test drive an automobile on which he had attempted to repair the accelerator. The accelerator subsequently "stuck" causing an accident in which the plaintiff and her children were injured. The Louisiana Court of Appeals found that under a theory of negligence the plaintiff must prove negligent repairs; that there was a causal relationship between the negligent repairs and the subsequent accident; and that the negligence was the proximate cause of the accident.³¹ The courts generally apply the "reasonable man" test in the proof of negligent repairs,³² a standard which necessitates expert testimony, usually by other mechanics. In proving the element of proximate cause the plaintiff often faces the defense of intervening or superseding causes. For example, in *Morgan v. Mixon Motor Co.*³³ there was conflicting evidence concerning the cause of the defective brakes. Awarding damages to the plaintiff, the Illinois Court of Appeals held that the defendant was negligent in adjusting the brakes and replacing the brake drum of plaintiff's automobile.³⁴ The dissent, however, argued that a brake fluid leak on the drum, discovered by an inspection of the car after the accident, and not attributable to the repair work, could have been the sole cause of the brake failure.³⁵ Contributory negligence or assumption of the risk is also a defense commonly

Ct. App. 1973); *West Esplanade Shell Serv., Inc., v. Breithoff*, 293 So. 2d 595, 597 (La. Ct. App. 1974); *Manzer v. Barnes*, 213 S.W.2d 464, 467 (Tex. Civ. App.—Amarillo), *rev'd on other grounds*, 216 S.W.2d 1015 (1948); Annot., 92 A.L.R.2d 1408 (1963).

28. See *Hutchison v. Ball*, 47 S.E.2d 913 (Ga. Ct. App. 1948); *Winkler v. SAR Mfg. Co.*, 508 S.W.2d 107, 109 (Tex. Civ. App.—Houston [1st Dist.] 1974, no writ); *Sam White Oldsmobile Co. v. Jones Apothecary, Inc.*, 337 S.W.2d 834 (Tex. Civ. App.—Houston 1960, writ ref'd n.r.e.).

29. See, e.g., *Thomson 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).

30. 220 So. 2d 229 (La. Ct. App.), *writ denied*, 222 So. 2d 884 (La.), *cert. denied*, 396 U.S. 957 (1969).

31. *Id.* at 239; see *Range v. Interstate Diesel, Inc.*, 215 N.W.2d 790 (Minn. 1974) (defendant employed to "check and repair as necessary" was held negligent in failure to detect leak in radiator which eventually caused damage to engine); *Clegg Motors v. Schrimsher*, 414 S.W.2d 762 (Tex. Civ. App.—Beaumont 1967, no writ) (defendant negligent in failure to discover defect in right wheel while replacing left wheel bearing); *Sam White Oldsmobile Co. v. Jones Apothecary, Inc.*, 337 S.W.2d 834 (Tex. Civ. App.—Houston 1960, writ ref'd n.r.e.) (repairs under dashboard of plaintiff's car held to be cause of subsequent fire under dashboard).

32. *Sheldon Livestock Co. v. Western Engine Co.*, 301 N.E.2d 485, 489 (Ill. Ct. App. 1973) (negligence theory requires a common duty of ordinary care); *Myers v. Ravenna Motors, Inc.*, 468 P.2d 1012, 1013 (Wash. Ct. App. 1970); see *Dick v. Reese*, 412 P.2d 815, 817 (Idaho 1966); *c.f. Westbrook v. Watts*, 268 S.W.2d 694, 697 (Tex. Civ. App.—Waco 1954, writ ref'd n.r.e.).

33. 137 N.E.2d 504 (Ill. Ct. App. 1956); see *Spolter v. Four-Wheel Brake Serv. Co.*, 222 P.2d 307, 313 (Cal. Ct. App. 1950).

34. *Id.* at 507.

35. *Id.* at 507-508.

alleged in negligence suits and, in many states, will result in a complete bar to the plaintiff's recovery.³⁶

Breach of contract is another theory of recovery which has been compared to the negligence theory in that both involve questions of a common duty of ordinary care.³⁷ In a breach of contract action, however, the plaintiff must prove a pre-existing contract, and is not subject to the defense of contributory negligence.³⁸ The primary difficulty encountered in maintaining a breach of contract action is that where the wording of the contract is ambiguous, the defendant may allege an interpretation different from that claimed by the plaintiff. The court is then required to make a finding as to the intention of the parties. In *West Esplanade Shell Service, Inc. v. Breithoff*³⁹ the car owner, complaining of excessive exhaust emission, employed a mechanic to restore his automobile to a "good running condition." The written contract called for a valve job and ring replacement. These repairs failed to alleviate the problem, and in the subsequent suit for breach of contract the question arose as to 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 found for the car owner, stating that the principal reason for the specific repairs was to alleviate the excessive exhaust emission.⁴⁰ Although the customer prevailed in *Esplanade*, the case demonstrates the rigorous burden of proof to which plaintiffs are subject in breach of contract suits and consequently, why this may sometimes be inadequate.

A cause of action for fraud or deceit requires a similar standard of proof. The plaintiff must establish the requisite intent in the mind of the defendant, a charge which is easily rebutted by a claim that the customer misunderstood the terms of the contract or the extent of necessary repairs.⁴¹ The mechanic may also allege that the customer abused the automobile or failed to maintain it properly after the repairs had been made.⁴²

Although consumers have sometimes been successful in common law actions for defective or unnecessary repairs, the cases have almost always in-

36. *Bereman v. Burdolski*, 460 P.2d 567, 569 (Kan. 1969); see *Hayes v. Viola*, 179 So. 2d 685, 689 (La. Ct. App. 1965); *Jewell v. Dell*, 284 S.W.2d 92, 96 (Ky. Ct. App. 1955); *Clegg Motors v. Schrimsher*, 414 S.W.2d 762, 764 (Tex. Civ. App.—Beaumont 1967, no writ).

37. *E.g.*, *Sheldon Livestock Co. v. Western Engine Co.*, 301 N.E.2d 485, 489 (Ill. Ct. App. 1973).

38. *Id.* at 489.

39. 293 So. 2d 595 (La. Ct. App. 1974).

40. *Id.* at 597; see *Manzer v. Barnes*, 213 S.W.2d 464 (Tex. Civ. App.—Amarillo 1948), *rev'd on other grounds*, 216 S.W.2d 1015 (1948).

41. See *Hoye & Williams v. Farmer*, 38 So. 2d 810 (La. Ct. App. 1949); *cf.* *Beggs v. Texas Elec. Serv. Co.*, 396 S.W.2d 461, 463 (Tex. Civ. App.—Fort Worth 1965, writ *ref'd n.r.e.*).

42. *Hearings on Automotive Repair Indus.*, Mich. 77th Legis. Sess. at 19-20 (Sept. 2, 1973).

volved extensive property damage or personal injury.⁴³ As a practical matter, the recovery must be large enough to justify the time and expense involved in a prolonged lawsuit. The legal principles requiring plaintiffs to establish proximate cause in tort actions or the intention of the parties in a suit for breach of contract and to prove each element by a preponderance of the evidence operate to discourage consumers from seeking common law remedies. Moreover, the average consumer is often simply unaware of his legal rights against deceptive trade practices.⁴⁴

Statutory Remedies

In response to the inadequacy of common law remedies a majority of states have adopted consumer legislation in an effort to curb deceptive trade practices and false advertising.⁴⁵ The Texas Deceptive Trade Practice-Consumer Protection Act has greatly enlarged consumer remedies, especially in the area of repair services.⁴⁶ The Act specifically provides that it is illegal to knowingly make "false or misleading statements of fact concerning the need for parts, replacement, or repair services"⁴⁷ The "bait and switch" technique is also prohibited by the Act.⁴⁸ The plaintiff in an action under the Act is not required to prove fraudulent intent but only that he has suffered damages under a specific statutory violation.⁴⁹

One of the most encouraging provisions of the new Consumer Protection Act is that it provides for the recovery of three times the amount of actual damages plus court costs, reasonable attorney's fees and injunctive relief.⁵⁰

43. *E.g.*, *Foy v. Ed Taussig, Inc.*, 220 So. 2d 229 (La. Ct. App. 1969) (personal injuries to plaintiff and her children); *Range v. Interstate Diesel, Inc.*, 215 N.W.2d 790 (Minn. 1974) (damage to automobile due to negligent repairs).

44. The Travis County survey revealed that of the 60.6 percent who felt that they had been the victim of fraud or deceptive practices only 8.7 percent threatened or took legal action. J. Pisani, *Automotive Repair: A Study of Consumer and Repair Shop Attitudes Toward the Industry, the Performance of Repairwork and Regulation* at 165, November 15, 1972 (unpublished thesis in University of Texas Library). Additionally, of those sampled, 40 percent felt that taking action would be a waste of time and resources or that it would simply "not do any good." *Id.* at 166.

45. For example, several states have enacted the Uniform Deceptive Trade Practices Act 1966: GA. CODE ANN. §§ 106-701 (Supp. 1974); NEW MEXICO STAT. ANN. §§ 49-15-1 to 49-15-18 (Supp. 1973); OHIO REV. CODE ANN. § 4165 (1972).

46. TEX. BUS. & COMM. CODE ANN. §§ 17.41-17.63 (Supp. 1974).

47. *Id.* § 17.46(b)(13). The Act also prohibits representing parts as new when they are used or reconditioned [*Id.* § 17.46(b)(6)] or extending misleading or false warranties such as the "lifetime guarantee." *Id.* § 17.46(b)(19). The consumer may also bring an action for breach of any express or implied warranties. *Id.* § 17.50(a)(2).

48. *Id.* § 17.46(b)(9). This section provides that "advertising goods or services with intent not to sell them as advertised," is a violation of the Act.

49. A. O'BRIEN, *THE EFFECTS OF THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT* (1974).

50. TEX. BUS. & COMM. CODE ANN. § 17.50(b)(1)-(3) (Supp. 1974); *cf.* TEX. REV. CIV. STAT. ANN. art. 5236e, § 4 (Supp. 1974) (landlord who wrongfully withholds security deposit is liable to the tenant for \$100.00 plus treble the amount of the deposit with-

This allowance should be a positive inducement for attorneys to accept the small claim cases most commonly brought against repair shops. Additionally, the Act provides for class actions in which only actual damages are recoverable.⁵¹

A further improvement in providing more accessible forums for consumer complaints is the authority granted the Consumer Protection Division to institute actions in the name of the state for temporary or permanent injunctions prohibiting deceptive practices.⁵² The injunction may be sought at any time the Division obtains information that any person is engaging in a practice unlawful under the Act.⁵³ The Division is also authorized to request civil penalties for any violation.⁵⁴

The Texas Consumer Protection Act provides specific relief for consumer complaints concerning deceptive trade practices, false advertising and breach of express or implied warranties. It provides no protection, however, against negligent or unskillful repair work, presently recognized as the greatest problem in the automotive repair industry. Incompetence can be controlled only by establishing minimum qualification standards and enforcing these standards through a mandatory licensing program. The Consumer Protection Act, however, does suggest the most effective means for settling the vast number of consumer disputes with the industry, that being through a government regulating agency. Under such a system consumers can avoid the stringent burdens of proof and the expense of time consuming litigation.

Occupational Licensing

Where the courts have failed to supply adequate relief for consumers, it is incumbent on the state through its legislature to prescribe other and more efficient forums for redressing valid claims. If these claims are directed toward one particular profession or industry, most states have preferred to assume regulation through occupational licensing and certification.⁵⁵ The

held). This section of the Consumer Protection Act also provides for restitution and "any other relief which the court deems proper . . ." TEX. BUS. & COMM. CODE ANN. § 17.50(b)(4) (Supp. 1974).

51. *Id.* § 17.51(b)(1). In a class action the parties may only recover actual damages plus court costs and reasonable attorney's fees. The advantage of a class action is that it provides an adequate remedy against the most common deceptive practices by joining many small claims into one large lawsuit which is likely to expose the practice to the public and the courts.

52. *Id.* § 17.47.

53. *Id.* § 17.47(a).

54. *Id.* § 17.47(c).

55. For example, the Texas State Insurance Commission, TEX. INS. CODE art. 1 (1963) or, the State Board of Barber Examiners, TEX. REV. CIV. STAT. ANN. arts. 8401-8407a (Supp. 1974); see Monaghan, *The Constitution and Occupational Licensing in Massachusetts*, 41 B.U.L. REV. 157, 166 (1961).

According to the Travis County study 73.5 percent of the consumers and 67.4 percent of the mechanics who were surveyed favored registration of repair shops. Licensing of

objective behind licensing is two-fold: to insure a minimum standard of competence in the profession, thereby protecting the general public from deceptive and unskillful trade practices, and to provide adequate means for complaint resolution.⁵⁶ As an efficient method of regulation, however, occupational licensing can impair the overall purposes of providing for the general public welfare. For instance, a compulsory licensing statute tends to limit competition within the industry by denying applicants who fail to meet the necessary qualifications the right to work in that particular field.⁵⁷ Without healthy competition the quality of work in the industry eventually stagnates, and price fixing is inevitable.⁵⁸

Another argument against licensing statutes is that for a commission to be effective in regulating a profession, it must be comprised of members of the profession who understand its problems and can realistically enforce the statute.⁵⁹ The tendency in such circumstances, however, is for the commission to be more responsive to the profession than to the public interest, especially when the members are appointed rather than elected.⁶⁰ As a result, the profession becomes self-regulating and insulated under governmental authority from consumer interests.⁶¹

Despite the criticism of occupational licensing, it can be successful in processing large number of consumer complaints filed against state registered

mechanics was favored by 69.9 percent of the consumers and 64.9 percent of the mechanics. J. Pisani, *Automotive Repair: A Study of Consumer and Repair Shop Attitudes Toward the Industry, the Performance of Repairwork and Regulation* at 202, 206, November 15, 1972 (unpublished thesis in University of Texas Library).

56. See Monaghan, *The Constitution and Occupational Licensing in Massachusetts*, 41 B.U.L. REV. 157, 165 (1961).

57. *Id.* at 165; see Note, *Occupational Licensing: An Argument for Asserting State Control*, 44 NOTRE DAME LAW. 104, 109 (1968). The state's right to deny its citizens from following a chosen profession is continually subject to constitutional challenge. Any arbitrary deprivation will be a violation of the due process clause of the 14th amendment. The state, however, in providing for the welfare of the general public can regulate any occupation in order to protect its citizens against the "consequences of ignorance and incapacity as well as deception and fraud." *Dent v. West Virginia*, 129 U.S. 114, 122 (1889); accord, *Glicker v. Michigan Liquor Control Comm'n*, 160 F.2d 96, 100 (6th Cir. 1947) (State has right to regulate and prohibit pursuit of certain business by exercise of police power where injurious to public); see *Texas State Bd. of Pub. Accountancy v. Fulcher*, 515 S.W.2d 950, 956 (Tex. Civ. App.—Corpus Christi 1974, writ filed).

58. For example, the Federal Trade Commission issued an order prohibiting a Washington association of automotive service stations from entering into any plan for price fixing by distributing fixed price schedules, lists or charts. *United States v. Greater Washington Serv. Station Ass'n*, Trade Cases 70,372 (1962).

59. *Hearings on Automotive Repair Indus.*, Mich. 77th Legis. Sess. at 24 (Oct. 1, 1973).

60. *Id.* at 24; see Monaghan, *The Constitution and Occupational Licensing in Massachusetts*, 41 B.U.L. REV. 157, 170 (1961); Note, *Occupational Licensing: An Argument for Asserting State Control*, 44 NOTRE DAME LAW. 104, 109 (1968).

61. *Hearings on Automotive Repair Indus.*, Mich. 77th Legis. Sess. at 24 (Oct. 1, 1973).

professions.⁶² Moreover, such regulation can increase or at least sustains the overall quality of the registered profession by prohibiting incompetent and unscrupulous persons from working in the particular field. In this way both the consumer's interest and the profession's reputation are protected.

PROPOSED LEGISLATION

The numerous studies conducted on the overall quality of automotive repair work and the findings of the 3-year senate congressional hearings have provided conclusive evidence of the necessity for state regulation of the industry in Texas.⁶³ California, Michigan and New York have recently adopted legislation providing for the registration of automotive repair shops and mechanics.⁶⁴ Several municipal governments, in particular the city of Dallas, have also enacted local ordinances similar in effect to the state legislation.⁶⁵ The California statute, the first attempt at such regulation, has been the model for other states and municipal governments. However, these later statutes have improvised and, in some instances, improved on the California approach. For example, while California merely requires the registration of repair shops, Michigan provides for the certification of mechanics as well.⁶⁶ Using a close scrutiny of these various approaches, a proposed Texas statute may be formulated which embraces the best qualities of each and also avoids the problems which have developed in their enforcement.

Administration

The effectiveness of any licensing statute requires administration and enforcement by a strong and viable governing body. The statute must clearly define the regulating board's purpose and authority and provide specific power to enforce its regulation in order to avoid a constitutional chal-

62. Of the 47,110 consumer complaints filed with the California Bureau of Automotive Repair during the fiscal year 1973-74, 46,718 were processed and closed. CAL. DEPT. OF CONSUMER AFFAIRS, SUMMARY OF CONSUMER COMPLAINT BRANCH ACTIVITIES (1973-74).

63. See, e.g., 1973 MICH. ATT'Y GEN. REP., SURVEY OF COSTS AND REPAIRS ON STATE CARS WITH INTENTIONAL DEFECTS; Wall Street Journal April 20, 1971, p. 1, col. 5. The Travis County survey has also revealed an inordinate amount of consumer dissatisfaction with the industry in Texas. See J. Pisani, *Automotive Repair: A Study of Consumer and Repair Shop Attitudes Toward the Industry, the Performance of Repair-work and Regulation* at 153, November 15, 1972 (unpublished thesis in University of Texas Library).

64. CAL. BUS. & PROF. CODE §§ 9880-9889.21 (Supp. 1973); Mich. H.B. 5047, 77th Legis. Sess. (1974); N.Y. VEH. & TRAF. LAWS § 398 (McKinney Supp. 1974). Only Michigan requires both the licensing of repair shops and certification of mechanics. Mich. H.B. 5047, 77th Legis. Sess. (1974).

65. DALLAS CITY CODE art. IX, §§ 50-113 to 50-130 (1974).

66. Compare CAL. BUS. & PROF. CODE § 9880-9889.21 (Supp. 1973) with Mich. H.B. 5047, 77th Legis. Sess. (1974).

lence of *vagueness*.⁶⁷ The California statute, which requires the registration only of repair shops, established the Bureau of Automotive Repairs within the Department of Consumer Affairs.⁶⁸ The board is headed by a director and consists of five members selected from the general public and four members who represent the automotive repair industry.⁶⁹ All members, including the director, are appointed by the governor subject to confirmation by the senate.⁷⁰ By requiring an almost equal number of board members representing the consumer interest as that of the industry, the problem of imbalanced interests is minimized, and the board will have the continual benefit of the four industry representative's expertise.⁷¹

The Michigan statute, which requires the registration of both repair shops and mechanics, contains no provision for the establishment of a board, but rather provides for administration of the act by the secretary of state.⁷² One of the reasons for authorizing the secretary of state to administer the statute was to avoid creating an ineffective board comprised of appointed members who might favor the interests of the industry.⁷³ Instead, it was felt that as an *elected* official, the secretary of state would be more responsive to the interests of the general public.⁷⁴

Under the proposed Texas statute a Bureau of Automotive Repairs would be created as a subdivision of the Attorney General's Office, Consumer Protection Division, as opposed to the secretary of state or the Department of Motor Vehicles:

§ 3. *Bureau of Automotive Repairs; Powers and Duties of Bureau.*

67. See *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972); *State ex rel. Sanborn v. Koscat Interplanetary Inc.*, 512 P.2d 416, 424 (Kan. 1973).

68. CAL. BUS. & PROF. CODE §§ 9880-9889.21 (Supp. 1973). The Dallas ordinance is also enforced under the Dallas Department of Consumer Affairs. DALLAS CITY CODE art. IX, § 50-113(a) (1974).

69. CAL. BUS. & PROF. CODE, § 9882.6 (Supp. 1973). This section also provides that those members representing the industry must have had at least 5 years of experience in the industry.

70. *Id.* §§ 9882.2, 9882.6.

71. To render a fair and equitable decision the board must have the benefit of an experienced mechanic's opinion. For example, where there are allegations of negligent or unskillful acts only a member with experience in the industry could determine the reasonable standard of care and skill expected of the average mechanic.

72. Mich. H.B. 5047, 77th Legis. Sess. § 1 (1974).

73. *Hearings on Automotive Repair Indus.*, Mich. 77th Legis. Sess. at 25 (Oct. 1, 1973). Another reason for authorizing the secretary of state was that under the Michigan Constitution any regulating board must contain a majority of members of the industry regulated. *Id.* at 24. Also, the Secretary of State's Office has a field staff suited for investigating complaints and has branch offices in every county. *Id.* at 26.

The New York statute delegates authority to the Commissioner of the Department of Motor Vehicles. N.Y. Laws 1974 c. 946 § 2. The Dallas ordinance, on the other hand, authorizes the director of the Consumer Affairs Department to enforce the ordinance. DALLAS CITY CODE art. IX, § 50-113(a) (1974).

74. *Hearings on Automotive Repair Indus.*, Mich. 77th Legis. Sess. at 25 (Oct. 1, 1973).

There is in the Attorney General's Office, Consumer Protection Division a Bureau of Automotive Repair under the supervision and control of the director of the Consumer Protection Division. The bureau may adopt and enforce such rules and regulations as it determines are reasonably necessary to carry out the purposes of this Act and declaring the policy of the bureau.

§ 5. *Bureau Board: Membership, appointments, and qualifications.*

There is in the bureau a board which consists of ten members headed by the director. The members shall be appointed by the director, subject to confirmation by the senate. Of the nine members appointed by the director, five shall be selected from the public and four members shall be selected from the automotive repair industry. Each member of the board shall be a United States citizen, a resident of Texas, and of good moral character. All nonpublic members shall have at least five years of experience in the industry, and whenever possible shall have been licensed under this act for a period of at least five years.

The director, shall establish boards within each regional office of the Attorney General. Each such board shall consist of five persons from the particular region designated by the director as follows: two persons who shall have been engaged in the automotive repair shop business for at least five years; two persons who shall be laymen having no association with the automotive repair shop business; and the head of the regional office of the Consumer Protection Division who shall act as regional director.

The action of a regional board in sustaining 1) a refusal to grant or to renew a certificate of registration, (2) a revocation or suspension of such a certificate or (3) the imposition of a civil penalty, shall be subject to review to the state board in Austin, Texas.

If the sole purpose of such legislation is licensing, the Michigan and New York approach would be preferable since one of the functions of the Secretary of State's Office and the Department of Motor Vehicles is to issue licenses while the Consumer Protection Division is basically concerned with litigation. The model Texas statute, however, is also intended as a consumer protection device. The bureau must be equipt to adequately process and settle consumer grievances, a function which is basic to the Consumer Protection Division. The division has developed a very successful system for handling consumer complaints. If it is determined that a complaint is valid, it is assigned for investigation to an attorney, preferably a specialist in that particular area.⁷⁵ An attempt is then made to settle the dispute between the parties through negotiation; if the accused fails to agree to a mutual solution, legal action is advised.⁷⁶ Although licensing is the primary purpose of the statute, it is basically a simple procedural function involving the processing of written

75. A. O'BRIEN, THE EFFECTS OF THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT (1974).

76. It has been reported that less than 10 percent of the investigations result in legal action. *Id.* at 20-21.

applications which will not alter the character of the Consumer Protection Division.

The bureau will consist of a 10 member board directed by the head of the Consumer Protection Division. The reason for specifying five members from the industry and only four from the general public is that the director is one of the 10 voting members and as head of the Consumer Protection Division his vote would tend to represent consumer interests. The necessity for the regulating body to fully represent both consumer and industry interests in making policy and rendering decisions would be defeated by authorizing a single administrative official to enforce the statute whether elected or appointed. For example, during formal hearings involving technical questions of a mechanic's negligence the single administrative official would be required not only to possess superior knowledge in the field of automotive mechanics, but also to appreciate the consumer's interests. Such broad representation can be assured only by a board consisting of members with adequate experience in each area. Undoubtedly, the secretary of state has the discretionary power under the Michigan statute to establish an advisory board;⁷⁷ under the proposed Texas statute, however, a 10 member board representing both consumer and industry interests is mandatory. Moreover, since the statute specifies the number of members representing each interest, the possibility of the board becoming overly responsive to the industry it is charged to regulate is minimized.

The argument that an elected official would be more representative of the public's interest than an appointee is valid, and it would be possible to require that the director of the bureau be elected as is the Railroad Commissioner.⁷⁸ The director's position of authority within the state government, however, is more closely analogous to that of the Commissioner of Insurance who is an appointed official⁷⁹ whose authority extends to a very limited business sector.⁸⁰ The Railroad Commissioner, on the other hand, can indirectly affect all areas of state commerce and therefore commands a significant enough power to warrant a general election of the office.⁸¹

Another practical advantage of the Michigan approach is that since the secretary maintains offices in every county of the state, rapid processing of consumer complaints is possible.⁸² In Texas the Attorney General's Office

77. See Mich. H.B. 5047, 77th Legis. Sess. § 8 (1974).

78. TEX. REV. CIV. STAT. ANN. art. 6447 (1926).

79. TEX. INS. CODE ANN. art. 1.09(a) (1963).

80. The primary duties of the Texas Insurance Board are to regulate insurance companies within the state. See TEX. INS. CODE ANN. art. 1.10 (1963).

81. Since railroads are a basic means of interstate freight transportation, the Texas Railroad Commission can indirectly affect many industries and commercial enterprises throughout the country. See TEX. REV. CIV. STAT. ANN. art. 6448 (1926).

82. *Hearings on Automotive Repair Indus.*, Mich. 77th Legis. Sess. at 26 (Oct. 1, 1973).

is divided into six regional offices located throughout the state.⁸³ Each office has a consumer protection division which is staffed for investigation and processing of valid claims within each region.

Classification

In addition to processing consumer complaints the board must also adopt procedures for the licensing of automotive repair shops and certification of mechanics.⁸⁴ Undoubtedly, the most important function of the board will be the certification of all mechanics since incompetence is the greatest source of consumer dissatisfaction.

§ 9. Examination for mechanic certification.

An applicant shall be required to have passed an examination which is designed to test the competency to correctly diagnose and repair motor vehicles in the specific category for which the applicant is applying. The examination shall be written, oral and practical. The bureau shall review examinations that are being given by private or public agencies, including the Board of Education. If the bureau approves an agency for the purposes of administering examinations, the prospective applicant may take the examination and the testing agency shall forward the results to the bureau for review and verification or the prospective applicant may take such examination as may be developed and given by the bureau.

§ 10. Training Program.

If a person is unable to obtain a certificate as a specialty or master mechanic as provided in this Act, and that person desires to become a specialty or master mechanic, he may make application for a mechanic trainee permit on the form prescribed or approved by the bureau. The bureau may issue or approve a mechanic trainee permit to a person who qualifies under the rules promulgated for that purpose. A person who qualifies as a mechanic trainee may retain that status for a period of

83. The central office is stationed in Austin with regional offices in Dallas, Houston, Lubbock, San Antonio and El Paso. Under the proposed statute a five-member board will be established in each regional office to facilitate in the administration of the Act. These regional boards will have the identical regulatory powers as the 10-member board in Austin, Texas. All decisions rendered by the regional board will be subject to appeal to the state board. This section is drafted in accordance with N.Y. VEH. & TRAF. LAWS § 398-F(2) (McKinney Supp. 1974).

84. The existing state statutes and municipal ordinances provide for certain exemptions. Mechanics engaged in the business of repairing the vehicles of a single commercial establishment or governmental agency or those who perform limited services such as repairing tires, lubricating and replacing minor accessories are generally not required to be certified. CAL. BUS. & PROF. CODE ANN. § 9880.1, 9880.2 (Supp. 1973); Mich. H.B. 5047, 77th Legis. Sess. § 2, 3 (1974); N.Y. VEH. & TRAF. LAWS § 398-b (McKinney Supp. 1974). DALLAS CITY CODE art. IX § 50-128; *App.* § 2. Although the proposed statute provides for these exemptions, it also gives the board discretionary power to determine which repair services require certification within the Act. Thus, if the performance of the service requires mechanical expertise or has given rise to a high incidence of fraud or deceptive practices or involves the essential safety of the automobile, it may be regulated. *App.* § 1. This section is drafted in accordance with CAL. BUS. & PROF. CODE ANN. § 9880.1 (Supp. 1973).

not more than four years. A mechanic trainee employed by a motor vehicle repair facility shall be required to work under the direct supervision of a specialty or master mechanic during the full time of his employment. The bureau shall by rule establish and operate a mechanic trainee training program designed to provide the training necessary to become certified under this Act. In lieu of establishing and operating the program the bureau may appoint schools, academies, or other similar establishments to engage in mechanic trainee training if those establishments, schools, or academies meet the criteria established therefore by the bureau, after consultation with the Department of Education and the United States Department of Labor, Bureau of Apprenticeship and Training. The establishments may be designated by the bureau to engage in a continuing education and training program for specialty and master mechanics.

§ 11. *Repair categories; Specialist and master mechanics.*

(1) *A person may become certified as a specialty mechanic if that person has passed an examination which the bureau determines is an adequate test of a person's ability to perform certain types of motor vehicle repair. The repair categories for which certification is required include the following and others that may be specified by rule:*

- (a) *Engine repair.*
- (b) *Automatic transmission.*
- (c) *Manual transmission and rear axle.*
- (d) *Front end.*
- (e) *Brakes.*
- (f) *Electrical systems.*
- (g) *Heating and air conditioning.*
- (h) *Engine tune-up.*

A person may apply for a specialty mechanic's certificate in any or all repair categories but shall be required to pay only one certification fee if the person makes the applications for more than one category at one time.

(2) *A person may apply for and receive a master mechanic's certificate if that person is qualified as a specialty mechanic in all categories of motor vehicle repair.*

In adopting the Michigan program the proposed Texas statute will require certification in either of two categories: *master* or *specialty* mechanic. To acquire a *specialty* mechanic license, the applicant must pass an examination determined by the bureau to be an adequate test of his ability to perform particular types of automotive repair.⁸⁵ A *master* mechanic, on the other hand, must be certified in all of the specialized categories. The examination should consist of written, oral and practical tests, since one of the arguments most often raised against licensing is that an otherwise competent mechanic

⁸⁵ The categories of specialization are: (1) engine repair; (2) automatic 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. Section 11 is drafted in accordance with Mich. H.B. 5047, 77th Legis. Sess. § 10(1) (1974).

might possibly be unable to pass a written examination.⁸⁶

The lack of competence in the automotive repair industry is due largely to the rapidly advancing technology of the automobile. Due to present economical and environmental concerns manufacturers have developed new and more complicated automobile engines. There is also a variety of engine designs, especially in the foreign car market, which require specialized training. No one mechanic or repair shop has the training or facilities to adequately perform every category of engine repair.⁸⁷ Consequently, there is an urgent need for specialization within the industry. By requiring mechanics to specialize and repair shops to be registered for each specialty they are equipt to perform, the consumer will be better protected from incompetent and unskillful repair work; he will have more than mere reputation from which to determine a mechanic's qualifications.

In requiring mechanics to be certified it will also be essential to provide the necessary training facilities. Again, in accordance with the Michigan Act, the proposed statute will authorize two methods of training. By acquiring a mechanic trainee permit, an applicant may either enter a 4 year apprenticeship program under the supervision of a certified mechanic,⁸⁸ or enroll in one of the training programs authorized by the bureau. The benefit of providing an apprenticeship program is that it provides an alternative to classroom training for those who need or prefer to acquire the necessary skills for certification while on the job.

In certifying schools and academies to operate the training programs throughout the state, the bureau will be required to consult the Texas Board of Education and the United States Department of Labor.⁸⁹ The state board of education will be able to implement the necessary training within the existing public school system since a vast majority of high schools already offer vocational training programs. It will be necessary, however, to expend more funds to upgrade the quality of these programs by providing adequate training facilities and more qualified instructors.⁹⁰ The Man Power Division of the Department of Labor has established a number of mechanical training programs, but they have usually been limited to providing training for the

86. *Hearings on Automotive Repair Indus.*, Mich. 77th Legis. Sess. at 8 (Sept. 21, 1973).

87. *Congressional Hearings*, pt. 1, at 130.

88. Under the Michigan statute the apprenticeship program requires 2 years training. The standard training period, however, as established by the Department of Labor apprenticeship program is 3 to 4 years. U.S. DEP'T OF LABOR, THE NATIONAL APPRENTICESHIP PROGRAM 10 (1972).

89. Section 10 is drafted in accordance with Mich. H.B. 5047, 77th Legis. Sess. § 13 (1974).

90. In the past, vocational training courses in public high schools have been considered a secondary or alternative program of education. In other words, those students who are not successful in their regular course of study are encouraged to take vocational training whether they are qualified or not for such training.

handicapped.⁹¹ Automobile manufacturers have also established training centers for the employees of their franchise dealers. These existing programs could possibly be extended, with sufficient state subsidies, to all prospective applicants.

Inevitably, one of the effects of licensing and specialization will be to eventually increase the overall cost of repairs. A mechanic who has expended a great deal of time and effort in acquiring these specialized skills will reasonably be expected to charge more for them. However, if a consumer can be assured of paying only for those repairs which are necessary and which are done correctly, the overall increase of a mechanic's hourly labor charge will be substantially less than the eight to ten billion dollars now wasted on incompetent repair work.⁹²

Another argument against mechanic licensing is that a mandatory certification program, as opposed to a voluntary one, will inhibit persons from entering the field which, in turn, could insulate the industry from healthy competition and create a guild-like profession.⁹³ As pointed out during the hearings on the Michigan Automotive Repair Act, this problem has not occurred in Ontario, Canada where mandatory certification has been in force for a number of years.⁹⁴ Moreover, it is the present reputation of the industry for incompetence and dishonesty which tends to inhibit potential mechanics, and this reputation can only be improved by insuring that quality work is performed in the industry.⁹⁵

Enforcement

Under the proposed Texas statute the basic regulatory power delegated to the bureau will be the authority to deny or revoke licenses.

§ 12. Refusal to validate, or invalidation of, registration: Grounds: Notification of refusal to validate, and hearing thereafter: Specific places of business affected.

The bureau, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct

91. *Congressional Hearings*, pt. 4, at 312.

92. *Hearings on Automotive Repair Indus.*, Mich. 77th Legis. Sess. at 5 (Sept. 3, 1973).

93. Note, *Regulation of Automotive Repair Services*, 56 CORNELL L. REV. 1010, 1027 (1971); see Monaghan, *The Constitution and Occupational Licensing in Massachusetts*, 41 B.U.L. REV. 157, 165 (1961).

In response to this argument it has been suggested that a voluntary, as opposed to mandatory, certification program would be more practical. Under this program each repair shop would be required to employ at least one certified mechanic to oversee all repair work. Note, *Regulation of Automotive Repair Services*, 56 CORNELL L. REV. 1010, 1029 (1971); see Mich. H.B. 5047, 77th Legis. Sess. § 5 (1974).

94. *Id.* § 5.

95. *Id.* § 5.

of the business of the automotive repair dealer, which are done by the automotive repair dealer or any mechanic, employee, partner, officer, or member of the automotive repair dealer.

(a) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(b) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.

(c) Failing or refusing to give to a customer a copy of any document requiring his signature, as soon as the customer signs such document.

(d) Any other conduct which constitutes fraud.

(e) Failure to perform work in a skillful and workmanlike manner or any other act amounting to negligence to the detriment of the customer.

(f) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

(g) Making unnecessary repairs or repairs not authorized by the customer.

(h) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service or maintenance of automobiles.

(i) Having repair work done by someone other than the dealer or his employees without the knowledge or consent of the customer unless the dealer can demonstrate that the customer could not reasonably have been notified.

Upon refusal to validate a registration, the bureau shall notify the applicant thereof, in writing, by personal service or mail addressed to the address of the applicant set forth in the application, and the applicant shall be given a hearing if within 60 days thereafter, he files with the bureau a written request for hearing, otherwise the refusal is deemed affirmed.

During any formal hearing involving disciplinary action conducted by the board, all parties will have the right to appear either personally or by counsel, or both, to produce witnesses and to have subpoenas issued by the director and to cross examine opposing or adverse witnesses.

§ 13. *Right of appeal.*

Any licensee whose registration is invalidated by the board may appeal to the district court within 20 days after the board makes a final determination.

§ 14. *Injunctions.*

If it appears that a person has engaged, is engaging, or is about to engage in a method, act, or practice in violation of this Act or the rules promulgated hereunder, the Attorney General may after receiving notice of an alleged violation of this Act, with or without prior administrative proceedings having occurred, bring an action in the name of the people of this state to enjoin that method, act, or practice. The action shall be brought in the county where the person resides, or does business.

§ 15. *Subpoena power.*

(1) For the purpose of an investigation or proceeding under this act, the bureau or an officer designated by it may administer oaths or affirmations, and upon motion of the Attorney General or upon the motion of a party to a proceeding, make application to the district court for a subpoena, and if in the judgment of the court there is reasonable grounds to believe a subpoena should be issued, the court shall issue a subpoena to compel the attendance of the designated person, take evidence, or require the production of any matter which is relevant to the investigation or proceeding before the director or other officer conducting a proceeding.

(2) Upon failure to obey a subpoena of the court or to answer questions propounded by the bureau or other officer conducting the investigation or proceeding, after reasonable notice to the persons affected thereby, an application may be made to the district court for an order compelling compliance. Failure to comply with the order of the court shall be punished as a contempt.

§ 16. Restitution: Civil penalties.

Upon final determination of any violation of this Act, the board will file charges with the district court for restitution to the injured party of any sums paid to the dealer as a result of the violation.

Any person who fails to comply in any respect with the provisions of this Act is guilty of a misdemeanor and on conviction is punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail not to exceed six months, or both.

§ 17. Required furnishing of estimates.

(1) A motor vehicle repair facility shall give to the customer a written estimate, itemizing as closely as possible the price for labor and parts necessary for a specific job prior to the commencement of work and shall not charge for work done or parts supplied over 10% of the estimated price without the knowing written or oral consent of the customer which shall be obtained at some time after it is determined that the estimated price is insufficient and before any work not estimated is done or the parts not estimated are supplied. This section shall not be construed as requiring a motor vehicle repair facility, mechanic, or mechanic trainee to give a written estimated price if he agrees not to perform the requested repair. If the actual cost of repair is less than the agreed upon estimated cost, the customer shall pay only the actual cost.

(2) If the facility or mechanic informs the customer that the price for repair will exceed the written estimate and the customer does not want the repair work performed then the customer is liable for all reasonable costs to return the vehicle to the condition it was when it entered the facility. These costs should be indicated in written form itemizing the costs as closely as possible with a copy given to the customer. The cost of a diagnosis to be made, whether or not the customer authorizes repairs to be performed, shall be contained in the written estimate before the diagnosis is undertaken.

The threat of denial or revocation of the license will be the most effective detriment to deceptive trade practices and incompetence within the industry. Other regulatory powers necessary for the proper enforcement of the Act will

be the power to, seek injunctions, require restitution whenever deemed proper by the board, and to impose civil penalties.⁹⁶ These powers should be complementary to the Consumer Protection Act; that is, where there is evidence of deceptive practices or false advertising, the board will have the authority, as an arm of the Consumer Protection Division, to impose sanctions authorized by that Act. Under the proposed Automotive Repair Act the board will also be authorized to impose sanctions for those specific violations of this statute which are not provided for under the Consumer Protection Act, for example, "failure to perform work in a skillful and workman-like manner or any other act amounting to negligence to the detriment of the customer."⁹⁷

The statute also requires that the repair shop provide a written estimate prior to commencing any repairs. Without prior authorization, the final bill may not exceed the original estimate by more than 10 percent. It has been argued that in many cases 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 over-charge in order to protect themselves. Although it is not uncommon for the full extent of repairs to exceed the original expectation, requiring an estimate poses no threat to adequate pricing. The mechanic is not limited to the original estimate, but rather is required simply to obtain authorization from the customer before making any unforeseen repairs. The repair shop should, on its own initiative upon presenting the original estimate, warn every customer of the possibility that other repairs might be required.⁹⁸ By requiring a written estimate, not only will unscrupulous mechanics be discouraged from overcharging, but the customer will also have evidence to substantiate a charge of deceptive practices.

The existing statutes and city ordinances authorize investigations by the regulating body either in response to complaints or on its own initiative,⁹⁹ and periodic inspection of repair shops and their records is permitted.¹⁰⁰

96. Sections 14 and 16 are drafted in accordance with CAL. BUS. & PROF. CODE ANN. § 9882.5 (Supp. 1973); Mich. H.B. 5047, 77th Legis. Sess. § 21 (1974); and N.Y. VEH. & TRAF. LAWS § 398-e(2) (McKinney Supp. 1974). It is generally held that rules established by an administrative agency have the force of law. *Fort Worth & Denver City Ry. v. Childress Cotton Oil Co.*, 48 F. Supp. 836, 940 (N.D. Tex.), *aff'd*, 141 F.2d 558 (5th Cir. 1944); *Automatic Gas Co. v. Dudding*, 189 S.W.2d 780, 782 (Tex. Civ. App.—Texarkana), *aff'd*, 193 S.W.2d 517 (1945).

97. *App.* § 12(e).

98. The proposed statute will also require the return of all replaced parts upon request by the customer, a provision which will aid in proving unwarranted repairs. The repair shop will also be required to maintain records of all repair work performed. *App.* §§ 18, 19.

99. CAL. BUS. & PROF. CODE ANN. § 9882.5 (Supp. 1973); Mich. H.B. 5047, 77th Legis. Sess. § 26 (1974); N.Y. VEH. & TRAF. LAWS § 398-g (McKinney Supp. 1974); DALLAS CITY CODE art. IX § 50-121(3) (1974).

100. CAL. BUS. & PROF. CODE ANN. § 9884.11 (Supp. 1973); Mich. H.B. 5047, 77th

Conceivably, this authority would permit the sending of "rigged" automobiles to different shops suspected of engaging in deceptive trade practices.¹⁰¹ This type of police power appears to be overreaching and an unnecessary infringement of the rights of the repair shop owner: the industry should not be subject to arbitrary inspection. The proposed Texas statute provides adequate means for conducting investigations by authorizing the board to subpoena persons or records on a showing of reasonable grounds.¹⁰²

Before any disciplinary action is taken, the board must conduct a formal hearing, giving adequate notice to all necessary parties.¹⁰³ The rules of pleading and evidence are not as strict in an administrative hearing as in civil cases;¹⁰⁴ the board will be bound, however, to the general legal principles regulating judicial tribunals.¹⁰⁵ The right of appeal and trial de novo from a decision rendered by the board is specifically provided in the proposed statute.¹⁰⁶ Under the doctrine of primary jurisdiction, however, courts do not acquire jurisdiction over the issue until the complainant has exhausted his remedies through the administrative agency, and it has rendered a final decision.¹⁰⁷

Mechanic's Liens

Under the California and Michigan statutes, any repair shop which fails to register with the state is precluded from asserting any lien for labor and parts or instituting any action on a contract for recovery of the costs of re-

Legis. Sess. § 17 (1974); N.Y. VEH. & TRAF. LAWS § 398-d(3) (McKinney Supp. 1974); DALLAS CITY CODE art. IX § 50-121(4) (1974).

101. See Note, *Regulation of Automotive Repair Services*, 56 CORNELL L. REV. 1010, 1021 n.58, 1022 (1971).

102. Section 15 is drafted in accordance with Mich. H.B. 5057, 77th Legis. Sess. § 28(1) (1974); see *McCombe v. Hunsaker Trucking Contractor*, 171 F.2d 523, 525 (5th Cir. 1948) (administrative agencies have power to conduct investigations and issue subpoenas); *Turner v. Bennett*, 108 S.W.2d 967, 970 (Tex. Civ. App.—Beaumont 1937, no writ) (Barber Commission could summon barber to inquiry).

103. Section 12 is drafted in accordance with CAL. BUS. & PROF. CODE ANN. § 9884.7 (Supp. 1973). Courts have generally recognized the right of notice and hearing before an administrative agency can take any disciplinary action. *Intercontinental Indus., Inc. v. American Stock Exch.*, 452 F.2d 935, 941 (5th Cir. 1971); *Commissioner v. West Prod. Co.*, 121 F.2d 9, 11 (5th Cir.), *cert. denied*, 314 U.S. 682 (1941).

104. See *Greyhound Lines v. Railroad Comm.*, 208 S.W.2d 593, 596 (Tex. Civ. App.—Austin 1947, writ ref'd in n.r.e.); *Traders & General Ins. Co. v. Huntsman*, 125 S.W.2d 431 (Tex. Civ. App.—Fort Worth 1939), writ *dism'd jdgmt cor.*

105. *Railroad Comm'n v. Jackson*, 315 S.W.2d 193, 196 (Tex. Civ. App.—Austin 1958, writ ref'd n.r.e.).

106. Section 13 was drafted in accordance with Tex. H.B. 781, 63d Legis. Sess. § 9(g) (1973). The courts also recognize the right to appeal from an administrative decision. *Industrial Accident Bd. v. O'Dowd*, 157 Tex. 432, 439, 303 S.W.2d 763, 768 (1957); *Fire Dept. v. City of Fort Worth*, 147 Tex. 505, 509, 217 S.W.2d 664, 666 (1949).

107. *Frito-Lay Inc. v. F.T.C.*, 380 F.2d 8, 10 (5th Cir. 1967); *Gregg v. Delhi-Taylor Oil Corp.*, 162 Tex. 26, 29-30, 344 S.W.2d 411, 414-15 (1961).

pairs.¹⁰⁸ This limitation raises a constitutional issue of whether the state or federal government can impair property rights created under a valid contract.¹⁰⁹ The Texas Supreme Court has stated that a legislative act is subject to constitutional attack if it is unreasonable, oppressive and arbitrary to such an extent as to deprive one of property without due process.¹¹⁰ To deprive a mechanic of his right to assert a lien for services rendered because of failure merely to register with the state would seem to be "unreasonable, oppressive and arbitrary."¹¹¹ This harsh inducement to register with the state is actually unnecessary since the board has the power to enjoin unregistered shops and mechanics from engaging in repair service.¹¹²

CONCLUSION

Opposition to an occupational licensing statute for the automotive repair industry in Texas has been based primarily on the concern that such a statute would not solve the fundamental problems within the industry and would be unreasonably harsh on repair shops. The rationale behind the California approach is that the threats only of possible license revocation and the imposition of fines will minimize incidents of fraud and negligence within the industry. Although this approach is undoubtedly effective in curtailing deceptive trade practices, it will have limited success in curing negligent and unskillful repair work. The only remedy for incompetence is to require occupational licensing with minimum certification standards, and to provide adequate training facilities for potential and inexperienced mechanics. Consequently, the proposed Texas statute will require both the registration of repair shops and the certification of mechanics, as does the Michigan Act.

The second consideration in proposing an occupational licensing statute is whether a regulating board is necessary. Licensing boards, like other agencies, are continually criticized for ineffectiveness and exhibiting favoritism toward those whom they are empowered to regulate. To prevent this result, the proposed statute has followed the California approach by establishing a board consisting of a specified number of members representing both con-

108. CAL. BUS. & PROF. CODE ANN. § 9884.16 (Supp. 1973); Mich. H.B. 5047, 77th Legis. Sess. § 31 (1974).

109. In *Lynch v. United States*, 292 U.S. 571, 579-80 (1934), the Supreme Court 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. See *Grigsby v. Peak*, 57 Tex. 142, 148 (1882); cf. *Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp.*, 210 F.2d 623, 630 (3d Cir. 1954).

110. *City of West University Place v. Ellis*, 134 Tex. 222, 226, 134 S.W.2d 1038, 1040 (1940); see *City of Amarillo v. Meade*, 286 S.W.2d 276, 278 (Tex. Civ. App.—Amarillo 1955, no writ) (zoning ordinance was violation of constitutional rights).

111. In Texas, mechanic's liens are guaranteed by the Constitution. TEX. CONST. art. XVI § 37.

112. *App.* § 8.

sumer and industry interests. Additionally, in an attempt to avoid enhancing the bureaucratic character of state government, the statute has established the Automotive Repair Bureau within an existing state agency which will complement the bureau's purpose. Presently, the Consumer Protection Division processes all complaints involving automotive repairs. It is, therefore, already staffed to aid the board in its investigations of alleged violations of the Act and to protect consumers.

Finally, critics of automotive licensing statutes have expressed concern over the question of who should bear the burden of financing the cost of maintaining a regulating bureau. Proponents of the California approach have observed that the California Automotive Repair Bureau is supported entirely by registration fees, unlike those of other states which also require appropriations from the legislature.¹¹³ Under the proposed Texas statute the Automotive Repair Bureau will be financed through appropriations from the legislature and minimal registration fees. Since the statute is fundamentally a consumer protection measure, it should be supported by the general public. Moreover, consumers will be better able to absorb the financial burden of maintaining the bureau than the individual repair shop. In the long run, this legislation will represent substantial savings to the public by minimizing the incidents of fraud and negligence within the automotive repair industry, and in turn, the reputation of the industry will be protected from unscrupulous and incompetent mechanics.

113. *Hearings on H.B. 781 Before the Senate Judiciary Comm.*, Tex. 61st Legis. Sess. (1973). The bureau is operated on a 2.8 million dollar budget. *Id.* The initial registration fee is \$25 to \$50, with an annual renewal fee of not more than \$50. CAL. BUS. & PROF. CODE ANN. § 9886.3 (Supp. 1973).

In addition, the fees are not proportionate to the size of the repair shop; the small independent must pay the same fee as a large franchise dealer. It has also been argued that under a self-supporting system, the reputable members of the industry are unjustly forced to pay for the incompetence and dishonesty of their fellow mechanics. *Hearings on Automotive Repair Indus.*, Mich. 77th Legis. Sess. at 14 (Oct. 1 1973).

APPENDIX
AUTOMOTIVE REPAIR ACT

§ 1. Definitions.

The following terms as used in this Act have the meaning expressed in this section.

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

(b) "Board" means the Advisory Board, Bureau of Automotive Repair.

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

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

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

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

(f) "Person" includes firm, partnership, association, or corporation.

(g) A "mechanic" is an employee of an automotive repair dealer or is such dealer, if the employer or dealer repairs motor vehicles and who for salary or wage performs maintenance, repair, removal, or installation of any integral component parts of an engine, driveline, chassis or body of any vehicle, but excluding repairing tires, changing tires, lubricating vehicles, installing light bulbs, batteries, windshield wiper blades, and other minor accessories; cleaning, replacing fan belts, oil and air filters; and other minor services which the director, by regulation, determines are customarily performed by a gasoline service station.

(h) "Director" means the Director of the Consumer Protection Division.

§ 2. Persons exempt from registration requirement.

The following persons are exempt from the requirement of registration:

(a) Any person who solely engages in the business of repairing the motor vehicles of a single commercial, industrial, or governmental establishment, or two or more establishments related by common ownership or corporate affiliation.

§ 3. Bureau of Automotive Repairs; Powers and Duties of Bureau.

There is in the Attorney General's Office, Consumer Protection Division a Bureau of Automotive Repair under the supervision and control of the Director of the Consumer Protection Division. The bureau may adopt and enforce such rules and regulations as it determines are reasonably necessary to carry out the purposes of this Act and declaring the policy of the bureau.

§ 4. Maintenance and availability of records of registered dealers: Bureau newsletter.

The director shall keep a complete record of all registered automotive repair dealers showing the names and addresses of all such dealers. A copy of the roster shall be made available to any person requesting it upon the payment of such sum as shall be established by the director as sufficient to cover the costs thereof. The bureau shall send to registered automotive repair dealers, at least twice a year, a newsletter which may describe recently adopted regulations, proposed regulations, disciplinary hearings, and any other information that the director shall determine will assist the bureau in its enforcement program.

§ 5. Bureau Board: Membership, appointments, and qualifications.

There is in the bureau a board which consists of ten members headed by the director. The members shall be appointed by the director, subject to confirmation by the senate. Of the nine members appointed by the director, five shall be selected from the public and four members shall be selected from the automotive repair industry. Each member of the board shall be a United States citizen, a resident of Texas, and of good moral character. All non-public members shall have had at least five years of experience in the industry, and whenever possible shall have been licensed under this act for a period of at least five years.

The director, shall establish boards within each regional office of the Attorney General. Each such board shall consist of five persons from the particular region designated by the director as follows: two persons who shall have been engaged in the automotive repair shop business for at least five years; two persons who shall be laymen having no association with the automotive repair shop business; and the head of the regional office of the Consumer Protection Division who shall act as regional director.

The action of a regional board in sustaining (1) a refusal to grant or to renew a certificate of registration, (2) a revocation or suspension of such a certificate or (3) the imposition of a civil penalty, shall be subject to review to the state board in Austin, Texas.

§ 6. Functions of board.

The board shall do all of the following:

(a) Inquire into the practice and policies of the automotive repair industry and the functions and policies of the bureau, and make such recommendations with respect to such policies, practices, and functions as may be deemed important and necessary by the board for the welfare of the consuming public and the automotive repair industry.

(b) Confer and advise with the director as to how the bureau may best fulfill its functions.

(c) Conduct hearings, render decisions, and issue penalties as authorized under this Act.

§ 7. Cessation of valid registration: On nonpayment of renewal fee.

Every registration shall cease to be valid on June 30 of each year unless the automotive repair dealer has paid the renewal fee required by this chapter.

§ 8. Prohibited dealership in absence of valid registration.

It shall be unlawful for any person to be an automotive repair dealer unless such person has registered in accordance with the provisions of this Act and unless such registration is currently valid.

§ 9. Examination for mechanic certification.

An applicant shall be required to have passed an examination which is designed to test the competency to correctly diagnose and repair motor vehicles in the specific category for which the applicant is applying. The examination shall be written, oral and practical. The bureau shall review examinations that are being given by private or public agencies, including the Board of Education. If the bureau approves an agency for the purposes of administering examinations, the prospective applicant may take the examination and the testing agency shall forward the results to the bureau for review and verification or the prospective applicant may take such examination as may be developed and given by the bureau.

§ 10. Training Program.

If a person is unable to obtain a certificate as a specialty or master mechanic as provided in this Act, and that person desires to become a specialty or master mechanic, he may make application for a mechanic trainee permit on the form prescribed or approved by the bureau. The bureau may issue or approve a mechanic trainee permit to a person who qualifies under the rules promulgated for that purpose. A person who qualifies as a mechanic trainee may retain that status for a period of not more than four years. A mechanic trainee employed by a motor vehicle repair facility shall be

required to work under the direct supervision of a specialty or master mechanic during the full time of his employment. The bureau shall by rule establish and operate a mechanic trainee training program designed to provide the training necessary to become certified under this Act. In lieu of establishing and operating the program the bureau may appoint schools, academies, or other similar establishments to engage in mechanic trainee training if those establishments, schools, or academies meet the criteria established therefore by the bureau, after consultation with the Department of Education and the United States Department of Labor, Bureau of Apprenticeship and Training. The establishments may be designated by the bureau to engage in a continuing education and training program for specialty and master mechanics.

§ 11. Repair categories; Specialist and master mechanics.

(1) A person may become certified as a specialty mechanic if that person has passed an examination to perform certain types of motor vehicle repair. The repair categories for which certification is required include the following and others that may be specified by rule:

- (a) Engine repair.
- (b) Automatic transmission.
- (c) Manual transmission and rear axle.
- (d) Front end.
- (e) Brakes.
- (f) Electrical systems.
- (g) Heating and air conditioning.
- (h) Engine tune-up.

A person may apply for a specialty mechanic's certificate in any or all repair categories but shall be required to pay only one certification fee if the person makes the applications for more than one category at one time.

(2) A person may apply for and receive a master mechanic's certificate if that person is qualified as a specialty mechanic in all categories of motor vehicle repair.

§ 12. Refusal to validate, or invalidation of, registration: Grounds: Notification of refusal to validate, and hearing thereafter: Specific places of business affected.

The bureau, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any mechanic, employee, partner, officer, or member of the automotive repair dealer.

(a) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(b) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.

(c) Failing or refusing to give to a customer a copy of any document requiring his signature, as soon as the customer signs such document.

(d) Any other conduct which constitutes fraud.

(e) Failure to perform work in a skillful and workmanlike manner or any other act amounting to negligence to the detriment of the customer.

(f) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

(g) Making unnecessary repairs or repairs not authorized by the customer.

(h) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service or maintenance of automobiles.

(i) Having repair work done by someone other than the dealer or his employees

without the knowledge or consent of the customer unless the dealer can demonstrate that the customer could not reasonably have been notified.

Upon refusal to validate a registration, the bureau shall notify the applicant thereof, in writing, by personal service or mail addressed to the address of the applicant set forth in the application, and the applicant shall be given a hearing if within 60 days thereafter, he files with the bureau a written request for hearing, otherwise the refusal is deemed affirmed.

During any formal hearing involving disciplinary action conducted by the board, all parties will have the right to appear either personally or by counsel, or both, to produce witnesses and to have subpoenas issued by the director and to cross examine opposing or adverse witnesses.

§ 13. Right of appeal.

Any licensee whose registration is invalidated by the board may appeal to the district court for a trial *de novo* within 20 days after the board makes a final determination.

§ 14. Injunctions.

If it appears that a person has engaged, is engaging, or is about to engage in a method, act, or practice in violation of this Act or the rules promulgated hereunder, the Attorney General may after receiving notice of an alleged violation of this Act, with or without prior administrative proceedings having occurred, bring an action in the name of the people of this state to enjoin that method, act, or practice. The action shall be brought in the county where the person resides, or does business.

§ 15. Subpoena power.

(1) For the purpose of an investigation or proceeding under this Act, the bureau or an officer designated by it may administer oaths or affirmations, and upon motion of the Attorney General or upon the motion of a party to a proceeding, make application to the district court for a subpoena, and if in the judgment of the court there is reasonable grounds to believe a subpoena should be issued, the court shall issue a subpoena to compel the attendance of the designated person, take evidence, or require the production of any matter which is relevant to the investigation or proceeding before the director or other officer conducting a proceeding.

(2) Upon failure to obey a subpoena of the court or to answer questions propounded by the bureau or other officer conducting the investigation or proceeding, after reasonable notice to the persons affected thereby, an application may be made to the district court for an order compelling compliance. Failure to comply with the order of the court shall be punished as a contempt.

§ 16. Restitution; Civil penalties.

Upon final determination of any violation of this Act, the board will file charges with the district court for restitution to the injured party of any sums paid to the dealer as a result of the violation.

Any person who fails to comply in any respect with the provisions of this Act is guilty of a misdemeanor and on conviction is punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail not to exceed six months, or both.

§ 17. Required furnishing of estimates.

(1) A motor vehicle repair facility shall give to the customer a written estimate, itemizing as closely as possible the price for labor and parts necessary for a specific job prior to the commencement of work and shall not charge for work done or parts supplied over 10 percent of the estimated price without the knowing written or oral consent of the customer which shall be obtained at some time after it is determined that the estimated price is insufficient and before any work not estimated is done or the parts not estimated are supplied. This section shall not be construed as requiring a motor vehicle repair facility, mechanic, or mechanic trainee to give a written estimated price if he agrees not to perform the requested repair. If the actual cost of repair is less than the agreed upon estimated cost, the customer shall pay only the actual cost.

(2) If the facility or mechanic informs the customer that the price for repair will

exceed the written estimate and the customer does not want the repair work performed then the customer is liable for all reasonable costs to return the vehicle to the condition it was when it entered the facility. These costs should be indicated in written form itemizing the costs as closely as possible with a copy given to the customer. The cost of a diagnosis to be made, whether or not the customer authorizes repairs to be performed, shall be contained in the written estimate before the diagnosis is undertaken.

§ 18. Required recording of work on invoice: Copies.

All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt or reconditioned parts, such invoice shall clearly state that fact. One copy shall be given to the customer and one copy shall be retained by the automotive repair dealer.

§ 19. Return of replaced parts to customer.

Upon request of the customer at the time the work order is taken, the automotive repair dealer shall return replaced parts to the customer at the time of the completion of the work excepting such parts as may be exempt because of size, weight, or other similar factors from this requirement by regulations of the Department of Motor Vehicles and excepting such parts as the automotive repair dealer is required to return to the manufacturer or distributor under a warranty arrangement. If such parts must be returned to the manufacturer or distributor, the dealer at the time the work order is taken shall offer to show, and upon acceptance of such offer or request shall show, such parts to the customer upon completion of the work, except that the dealer shall not be required to show a replaced part when no charge is being made for the replacement part.

§ 20. Dealer's maintenance of records: Availability for inspection.

Each automotive repair dealer shall maintain such records as are required by regulations adopted to carry out the provisions of this chapter.

§ 21. Individual's civil action against dealer.

Nothing in the provisions of this chapter shall prohibit the bringing of a civil action against an automobile repair dealer by an individual.