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BILL ANALYSIS



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House Bill 5857 (as passed by the House)
Sponsor: Representative Peter Pettalia
House Committee: Transportation and Infrastructure
Senate Committee: Regulatory Reform

Date Completed: 12-7-16

CONTENT

The bill would amend the Motor Vehicle Service and Repair Act to codify a number of administrative rules relating to automotive business, and make other changes. Specifically, the bill would do the following:

- Codify, revise, or delete definitions under the Act.
- Codify the repair activities performed by a gasoline service station or person that qualify that station or person as a motor vehicle repair facility subject to the Act.
- Codify prohibitions against certain practices regarding contracts, repairs, warranties, advertising or representation, liens, estimates or charges, and coercive practices by a motor vehicle repair facility subject to the Act, or a person who is an owner or operator of a facility subject to the Act.
- Allow the Administrator to promulgate any rules necessary to implement the Act, and codify provisions allowing him or her to issue declaratory rulings and take action against a stockholder, officer, director, or partner of a facility that is a corporation or partnership that violates certain provisions.
- Codify the repair categories for automobiles and light trucks, and heavy-duty trucks that an individual may specialize in as a specialty or master mechanic.
- Allow a specialty mechanic qualified in all repair categories to apply for certification as a master mechanic for light vehicles and heavy-duty trucks, with respect to the qualifications achieved for each category.
- Codify the requirements for an individual to be certified as a master motorcycle mechanic or recreational trailer mechanic.
- Codify expiration policies for permits, certificates, or registration relating to a master mechanic, specialty mechanic, or a motor vehicle repair facility and prescribe the process under which those documents could be renewed.
- Codify the conditions under which an applicant for certification may take an oral or practical test, and specify other details regarding the examination.
- Codify provisions pertaining to a mechanic trainee permit.
- Codify provisions detailing the evaluation and approval of a school, academy, or other similar establishment that intends to provide training to mechanics or mechanic trainees under the Act.
- Establish requirements for certified master, specialty, or trainee mechanics, including provisions that would apply if those individuals violated certain requirements.
- Codify the requirement for additional information from the owner of a motor vehicle repair facility when he or she registers the facility.
- Codify provisions regarding a "change of ownership" for a motor vehicle repair facility and the details regarding new registration, including any required fees.

- **Codify provisions regarding the amount of time a motor vehicle repair facility must keep its business records for inspection, and include other details regarding records.**
- **Codify the requirement that certain information be included on a replacement registration permit.**
- **Establish examination, application, certificate, and renewal fees for mechanics.**
- **Change from \$10 to \$50 the amount a motor vehicle repair facility may charge above the estimate given to the customer who did not sign a special waiver before requiring a written or oral consent for that excess charge.**
- **Codify requirements for a registered motor vehicle repair facility to display certain items.**
- **Codify provisions regarding the return of parts to a customer.**
- **Change from \$20 to \$50 the minimum amount that triggers a requirement for a motor vehicle repair facility to provide a customer an estimate before beginning repairs.**

The bill would rescind R 257.101 to 257.173 of the Michigan Administrative Code (which relate to general automotive businesses).

The bill would take effect 90 days after its enactment.

"Administrator" means the Secretary of State or any person designated by him or her to act in his or her place.

(The Motor Vehicle Service and Repair Act regulates the practice of servicing and repairing motor vehicles, and provides for the registration of motor vehicle repair facilities, among other things.)

Minor Repair Services

Under the Act, unless the means of doing or engaging in a motor vehicle repair business including the operation of a motor vehicle repair facility are adopted for the purpose of evading the Act, the Act does not apply to gasoline service stations exclusively engaged in the business of selling motor fuel and lubricants. However, a person or facility providing minor services or activities incidental to the business of selling motor fuel and lubricants is considered a motor vehicle repair facility and subject to the Act.

Under the bill, this would apply to a person performing minor repair services, including a gas station. The bill would define "minor repair services" as lubrication; oil changes; installing, changing, or otherwise servicing the antifreeze or other coolant; body repairing, except for unitized body structural repair; or the replacement, adjustment, repair, or servicing any of the following:

- Air cleaner element.
- Accessory drive belt.
- Air pump hose.
- 12-volt battery.
- A ground cable, hold-down strap, positive cable, and battery-to-starter relay cable for a 12-volt battery.
- Crankcase vent air cleaner and air cleaner hose.
- Engine oil filter.
- Exhaust pipe, muffler, catalytic converter, or tail pipe and associated attaching parts.
- Fuel filter.
- Fuel line flex hose or line.
- Fuel tank, except for a tank that contains a fuel pump.
- Fuse.

- Heater hose.
- Horn.
- Idler pulley, adjust only.
- Ignition coil output wire.
- Lightbulb or headlamp.
- Motor or transmission mount.
- Ornamental accessories.
- Positive crankcase ventilation control valve.
- Radiator.
- Radiator hose, upper or lower.
- Radiator reserve tank.
- Rear spring, leaf or coil, except a MacPherson strut-type assembly.
- Shock absorber that was not built in combination with other parts of the suspension.
- Analog speedometer.
- Vapor canister hose.
- Wheel, except alignment.
- Windshield washer hose or tank.
- Wiper blade.

That list would incorporate many of the same parts in the Administrative Code's definition of minor repair services.

Prohibited Contracts

A person subject to the Act may not engage or attempt to engage in a method, act, or practice that is unfair or deceptive.

The bill would incorporate a list of prohibited contract activities from the Administrative Code. Under the bill, a motor vehicle repair facility that was subject to the Act, or a person that was an owner or operator of a facility subject to the Act, could not, directly or through an agent or employee do any of the following:

- Enter into a contract with a customer that used a waiver to circumvent or evade the Act.
- Enter into a contract that took advantage of a customer's inability to reasonably protect his or her interests because of his or her illiteracy or inability to understand the language of an agreement, if the facility knew or reasonably should have known of the customer's illiteracy or inability to understand.
- Enter into a contract with a customer that had gross discrepancies between the oral representations of the facility and the written agreement covering the same transaction.
- Make, in writing or orally, an untrue or misleading statement of a material fact to a customer.
- Fail to reveal a material fact to a customer that the customer could not reasonably have known if that omission tended to mislead or deceive the customer.
- Enter into a contract with a customer that would attempt to abrogate, disclaim, or disallow the legal rights, obligations, or remedies of the customer.
- Allow a customer to sign an acknowledgement, certificate, or other writing that would affirm acceptance, delivery, compliance with a requirement of law, or other performance, if the facility knew or had reason to know that the statement was not true.
- Set up contractual provisions with a customer, including the statement of repairs and waivers, that was not specific in language, clearly described, or reasonably legible.
- Attempt to avoid or evade the law through a contract with a customer or any provision of a contract with a customer.
- If a contract with a customer were rescinded, canceled, or otherwise terminated under the terms of the contract or under the Act, fail to promptly return any deposit, down payment, or other payment to the person who was entitled to receive it.
- Allow a customer to sign a document in blank relating to the repair of a motor vehicle.

- Fail to give a customer a copy of a document evidencing the engagement of a facility at the time the customer executed the document.

Additionally, when returning a repaired vehicle to a customer, a motor vehicle repair facility or the owner or operator of a facility could not fail to give the customer a written statement of repairs that disclosed the repairs needed, as determined by the facility; the repairs requested and authorized by the customer; the facility's estimate of repair costs and the actual repair costs; the repairs or services performed, including a detailed identification of all parts that were replaced and a specification of which parts were new OEM (original equipment manufacturer), new, used, rebuilt, OEM surplus, or reconditioned; and a certification that authorized repairs were completed properly or a detailed explanation of an inability to complete repairs properly. The owner of a facility, or an individual designated by the owner to represent the facility, would have to sign that certificate statement, which would have to include the name of the mechanic who performed the diagnosis and repair.

The bill would define "contract" as a written or oral agreement, or a similar understanding or arrangement, in which a person agreed that another person would perform work, labor, diagnosis, repair, reconditioning, replacement, adjustment, or alteration, directly or indirectly, on a motor vehicle.

Repairs

The bill would incorporate a list of prohibited repair activities from the Administrative Code. Under the bill, a motor vehicle repair facility that was subject to the Act, or a person that was an owner or operator of a motor vehicle repair facility that was subject to the Act, could not, directly or through an agent or employee do any of the following:

- Charge for repairs that were in fact not performed.
- Perform repairs that were in fact not necessary, unless the customer insisted that the facility perform the repair and disregarded the facility's advice that the repair was unnecessary.
- Represent, directly or indirectly, that repairs were necessary when in fact they were not.
- Perform and charge for repairs that were not specifically authorized.
- Fail to perform promised repairs within the period of time agreed, or within a reasonable time, unless circumstances beyond the control of the facility prevented the timely performance of the repairs and the facility did not have reason to know of those circumstances at the time the contract was made.
- Represent, directly or indirectly, that a replacement part used in the repair of a vehicle was new or of a particular manufacture when in fact it was used, rebuilt, reconditioned, deteriorated, or of a different manufacture, or otherwise fail to disclose in writing, before beginning a repair, the use of used, rebuilt, or reconditioned parts.
- Subsequent to a diagnosis requested by a customer for which a charge was made, fail to disclose a diagnosed or suspected malfunction, the recommended remedy for the malfunction, and any test, analysis, or other procedure employed to determine the malfunction.

The major component parts referred to above would include the right or left front fender; the hood; the door that allows entrance to or egress from the passenger compartment of the vehicle; the front or rear bumper bar; the right or left rear quarter panel; the deck lid, tailgate, or hatchback; the trunk floor pan; the cargo box of a pickup; the frame, or if the vehicle has a unitized body, the parts identified by the motor vehicle manufacturer as structural components; the cab of a truck; the body of a passenger vehicle; or airbags or seatbelts.

Under the Administrative Code, "repair" means the reconditioning, adjustment, alteration, maintenance, or diagnosis of the operating condition of a motor vehicle, with or without the

replacement of any component or subassembly of a motor vehicle, for compensation or under the terms of a warranty. The bill would codify this definition.

Warranties

The bill would incorporate a list of prohibited activities regarding warranties in the Administrative Code. Under the bill, a motor vehicle repair facility that was subject to the Act, or a person that was an owner or operator of a facility subject to the Act, could not, directly or through an agent or employee, do any of the following:

- Disclaim or limit the implied warranty of merchantability or fitness for use, unless excluded or modified under Section 2316 of the Uniform Commercial Code.
- Fail to extend the period of a facility's own warranty for repairs and services, if the customer were deprived of the use or enjoyment of the subject of the warranty because of a failure on the part of the facility to comply completely with the terms of the warranty, for a period of time that was equal to or greater than the period of the deprivation.
- Fail to honor a warranty on a new part by replacing it with a used part or replacing it with a rebuilt or remanufactured part that did not meet original equipment quality, standards, or specifications, or that did not comply with the warranty repair requirements of the warrantor.
- Fail to honor an express warranty.
- Fail to disclose in written language, that was clear as to the nature or scope of the warranty, all material aspects and the intent of a warranty, including what was warranted, the person who would honor the warranty, the duration of the warranty, the obligations, if any, of the person to whom the warranty was extended, and any exceptions and exclusions from the terms of the written warranty agreement.

(Under Section 2316 of the Uniform Commercial Code, to exclude or modify the implied warranty of merchantability or any part of it, the language must mention merchantability and in case of a writing must be conspicuous; and to include or modify any implied warranty of fitness, the exclusion must be in writing and conspicuous.)

Under the Administrative Code, "warranty" means a guarantee given by a motor vehicle repair facility, in writing or by implication, of the merchantability, the integrity of the subject of a contract or of the maker's responsibility for the replacement or repair of defective parts or services, or both, assuring performance, product, or conditions as promised or declared. The bill would codify this definition.

Advertising or Representation

The bill would incorporate a list of prohibited advertising activities in the Administrative Code. Under the bill, a motor vehicle repair facility that was subject to the Act, or a person that was an owner or operator of a facility subject to the Act, could not, directly or through an agent or employee, advertise or represent, directly or indirectly, any of the following:

- Reduced prices for products or services that were not sold at the advertised price during the period of the offering.
- Products or services at a particular price during a particular period that was not extended for any person who wanted but did not obtain the products or services during the advertised period because the facility had failed to prepare for the reasonably expected public demand.
- That a customer would receive products or services "free" or "without charge", or words of similar import, if there were undisclosed conditions, terms, or limitations attached to the offer of those products or services.
- Products or services while failing to reveal a material fact that a customer could not reasonably know, if the omission of that fact tended to mislead or deceive the customer.

- That a customer would receive a rebate, discount, or other benefit as an inducement for entering into a contract, if the benefit were contingent on the occurrence of an event after the transaction was completed.
- That a facility had the ability to perform repair services using personnel who were qualified in specific repair specialties, including those specialties itemized under the Act, if in fact the facility did not employ mechanics who were legally certified in those specialties.
- Products or services, if there were a material contingency, condition, or limitation on the offer of those products or services, unless the contingency, condition, or limitation was stated contemporaneously with the offer in a manner clearly and easily understood by the customer.
- Products or services in a language other than English, unless the advertisement or representation included any required disclosures or limitations on the offer in the language principally used in the advertisement or representation.
- That mechanics employed by a facility were "certified", "licensed", or otherwise qualified if that representation tended to give the impression that all mechanics employed by the facility were certified or licensed if in fact they were not.
- That a customer's failure to act quickly or within a certain period of time to procure products or services would result in the loss of opportunity to procure them at a particular price, if it were untrue.
- Credit availability, in a manner that created a likelihood of confusion or misunderstanding of the terms or conditions of credit, or that credit availability or the terms of credit were "easy", or words of similar import to describe credit availability or terms, if that were untrue.
- That products or services were sold under the terms of "satisfaction guaranteed or money back", or words of similar import, if the customer's declaration of dissatisfaction were not a sufficient basis for obtaining a refund of the purchase price for those products or services.
- The necessity, desirability, or advantage to a prospective customer of dealing with a facility by misrepresenting its alleged advantages of size.
- That a document that a customer signed was something other than what it was.
- An aspect of a repair transaction in a manner that caused a likelihood of confusion, or of misunderstanding, with respect to the authority of a mechanic, salesperson, representative, or agent to negotiate the final terms of a transaction.
- An aspect of a repair transaction in a manner that caused a likelihood of confusion, or of misunderstanding, of the legal rights, obligations, or remedies of a party to the transaction.
- That service on an offered product was available under a warranty if it were not available or there were undisclosed limitations or conditions on the availability of that service.
- A free or low-cost inspection or diagnosis that required the removal or dismantling, or both, of a part or assembly and failing to disclose before the transaction a charge for replacement or reassembly if the customer declined to authorize a recommended repair.
- A product or service at a reduced rate and, if the facility failed to provide it at the offered price during the period of the offering to a customer seeking it, failing to offer and give the customer the opportunity to obtain the product or service at the same reduced rate within a reasonable period of time after the original offer expired.
- Products or services, or the availability of products or services, in a manner that involved the solicitation of waivers by the facility.
- Products or services that failed to meet the reasonably expected public demand for the duration of the advertised offering, unless the advertisement had clearly expressed a specific limitation on the quantity of the advertised products or services.
- The words "certification", "licensing", or "registration", or words of similar import, of a motor vehicle repair facility or mechanic, by any organization, association, governmental entity, or other program or authority other than the Administrator, without clearly and conspicuously disclosing the source of the certification, licensing, or registration, and without adding the disclaimer "not the Michigan Department of State".

- The desirability or advantages of certification or licensing by a Federal, State, or local governmental agency, or that a motor vehicle repair facility or mechanic was approved or sanctioned by the Administrator.

Liens

The bill would incorporate a list of prohibited activities regarding liens in the Administrative Code. Under the bill, a motor vehicle repair facility that was subject to the Act, or a person that was an owner or operator of a facility subject to the Act, could not, directly or through an agent or employee, do any of the following:

- Assert, claim, or impose a mechanic's or similar type of lien if the facility had violated the Act or rules promulgated under it with respect to the transaction on which the lien was based.
- Seek the repossession of a motor vehicle if the facility had violated the Act or rules with respect to the transaction on which the repossession was based.
- Seek to assert or enforce a lien by refusing to return a vehicle if the facility had violated the Act or rules with respect to the transaction on which the refusal was based.
- Fail to return a customer's vehicle if there were a dispute and the customer had paid the amount of the written estimate and any amount in excess of that amount that was agreed to orally or in writing by the customer.

The bill would define "lien" as a security interest in or other encumbrance on a motor vehicle. The term would include a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien on a vehicle.

Estimates & Charges

The bill would incorporate a list of prohibited activities regarding estimates and charges in the Administrative Code. Under the bill, a motor vehicle repair facility that was subject to the Act, or a person that was an owner or operator of a facility subject to the Act, could not, directly or through an agent or employee, do any of the following:

- Unless legally waived by the customer, fail to give the customer a written estimate before beginning work on a motor vehicle.
- Charge for work done or parts supplied in excess of the estimated price without the customer's oral or written knowing consent.
- Fail to give a customer an estimate for the cost, if any, of reassembly, disassembly, or diagnosis.
- Fail to inform a customer, before he or she executed a document or engaged the facility for the work, by the use of a notice required under Section 33 of the Act (which contains provisions regarding the return of parts to the customer), of his or her right to receive or inspect replaced parts for which he or she would be charged in the repair of his or her motor vehicle.
- Fail to retain a customer waiver with the records kept by the facility concerning the transaction.
- Charge a customer storage charges if there were a dispute concerning repair charges, unless a delay in repairs was caused by a lack of parts.
- Fail to comply with the Truth in Lending Act, and the Retail Installment Sales Act, if the customer financed repairs through the facility.
- Fail in practice to comply with advertised or stated payment policies.
- Conspire with another to fix prices or allocate the market between them.
- Fail to notify a customer of an exchange agreement and charges for exchange parts if the customer wished to have those parts returned.
- Fail to disclose, on the customer's request, the method used by a facility to compute labor charges.

(The Truth in Lending Act provides consumer protection against inaccurate and unfair credit billing and credit card practices. The Retail Installment Sales Act regulates retail installment sales transactions, agreements, charges, and disclosures.)

Coercive Practices

The bill would incorporate a list uncategorized prohibited activities in the Administrative Code. Under the bill, a motor vehicle repair facility that was subject to the Act, or a person that was an owner or operator of a facility subject to the Act, could not, directly or through an agent or employee, do any of the following:

- Improperly use waivers in a manner that suggested or implied, directly or indirectly, orally or by action, that signing a waiver would improve or expedite service or repairs or would reduce the price.
- Exaggerate the seriousness of a malfunction to induce a customer to agree to a repair.
- Suggest or imply, directly or indirectly, orally or by action, that service would be improved or expedited or that the price would be reduced if the customer agreed that the facility was not required to return for inspection any parts that it replaced.
- Misrepresent that, because of some defect in the customer's motor vehicle, the health, safety, and lives of the customer or his or her family were in danger if parts or repair services were not purchased, if in fact the defect did not exist or the installation of the parts or the performance of the services would not remove the danger.

Administrator Duties & Actions

The Act requires the Administrator to do the following:

- Certify master and specialty mechanics, issue permits to mechanic trainees, and register motor vehicle repair facilities subject to the Act.
- Keep a complete register of motor vehicle repair facilities subject to the Act.
- Keep an accurate listing by name and by certificate number of each specialty and master mechanic certified by the Administrator at the office of the Secretary of State.
- Engage in a public information program to inform members of the public of their rights and remedies under the Act.
- Inform registered motor vehicle repair facilities at least annually of the rules promulgated under the Act, among other things.
- Establish procedures for receiving complaints relating to alleged violations of the Act or rules promulgated under it.
- Establish and collect fees for certification examinations administered by the Administrator.

In addition, the Administrator must promulgate rules, including the following:

- Definitions of unfair and deceptive practices, minor repair services, and repair categories for the certification of specialty and master mechanics.
- Criteria for determining the competency of specialty and master mechanics, as a prerequisite to continued certification under the Act.
- Other rules as necessary to implement the Act.

The bill would eliminate these promulgation of rules requirements. Instead, the bill would require the Administrator to promulgate any rules necessary to implement the Act.

Furthermore, the bill would codify provisions on declaratory rulings in the Administrative Code. The Administrator could issue a declaratory ruling concerning the applicability of the Act or rules promulgated under it to an actual statement of facts if the Administrator received a request for a declaratory ruling from an interested person and the person submitted a clear and concise statement of facts to the Administrator. The person could submit to the

Administrator a brief or other reference to legal authorities on which the interested person relied concerning the applicability of the Act or rules to the statement of facts.

If the Administrator decided to issue a declaratory ruling, he or she would have to provide to the person who requested it a statement that the Administrator would issue a declaratory ruling and the date by which he or she would issue it. The ruling would have to include the actual statement of facts provided by the person, the legal authority on which the Administrator relied for his or her ruling, if any, and the ruling of the Administrator.

After it was issued, a declaratory ruling would be binding on the Administrator and he or she could not retroactively change it. However, this would not prohibit the Administrator from prospectively changing a ruling.

Registration, Certificate, or Permit Sanctions

Currently, the Administrator may deny, suspend, or revoke a registration, certificate, or mechanic trainee permit after notice and opportunity for a hearing if the Administrator determines that the facility, mechanic, or trainee did one or more of the following:

- Engaged in an unfair or deceptive method, act, or practice, or made an untrue statement of a material fact.
- Violated the Act or a rule promulgated under it.
- Violated a condition of probation.
- Made unnecessary repairs or repairs not authorized by a customer.
- Refused to honor warranties made by the facility.
- Caused or allowed a customer to sign a document in blank relating to the repair of a motor vehicle.
- Was enjoined by a court from engaging in the trade or business of repairing motor vehicles or from a violation of the Act or a rule promulgated under it.
- Failed to comply with the terms of a final cease and desist order.
- Was convicted of a violation of the Act.
- Used the waiver of liability provision in an attempt to evade the Act.
- Was convicted of a violation of Public Act 119 of 1986 (which regulates the business of buying or receiving used motor vehicle parts), or was convicted in another state of a violation of a law substantially corresponding to certain sections of the Michigan Penal Code.

The Administrator also may take action against a registration, certificate, or mechanic trainee permit if the applicant is a corporation or partnership, and a stockholder, officer, director, or partner of the applicant was guilty of an act or omission that would be a cause for refusing, revoking, or suspending a license issued to the officer, director, or partner as an individual. The bill would delete this provision.

Under the bill, if a facility, mechanic, trainee, stockholder, officer, director, or partner of a facility that was a corporation or partnership took any of the actions listed above, the Administrator, after determining that the entity was in violation and providing notice and opportunity for hearing, could do one or more of the following:

- Place a limitation on a registration, certificate, or mechanic trainee permit.
- Suspend a registration, certificate, or mechanic trainee permit.
- Deny a registration, certificate, or mechanic trainee permit or renewal of a registration, certificate, or mechanic trainee permit.
- Revoke a registration, certificate, or mechanic trainee permit.
- Censure the person holding a registration, certificate, or mechanic trainee permit.

As an alternative to those administrative actions, or in addition to them, the Administrator could, by written agreement with a person holding a registration, certificate, or mechanic trainee permit, place that authorization on probation and include conditions of probation in the agreement.

The remedies and sanctions under the Act would be independent and cumulative. The use of a remedy or sanction under the Act, including administrative action or an agreement for probation, would not bar other lawful remedies and sanctions against a person or limit a person's criminal or civil liability under law.

Mechanic Certification

The Act provides for the certification of mechanics. All mechanics must pass examinations developed by the Administrator, or developed by a private entity and adopted by the Administrator, that the Administrator determines are an adequate test of a person's ability to perform certain types of motor vehicle repair.

The Act allows an individual to become certified as a specialty mechanic in one or more repair categories. An individual may apply for a specialty mechanic's certificate in any or all repair categories but is required to pay only one certification fee if he or she applies for more than one category at one time.

The repair categories are as follows:

- Engine repair.
- Automatic transmission.
- Manual transmission and rear axle.
- Front end.
- Brakes.
- Electrical system.
- Heating and air conditioning.
- Engine tune-up.
- Pre-1973 motor vehicle.

An individual may apply for and receive a certificate as a master mechanic if he or she is qualified as a specialty mechanic in all categories of motor vehicle repair, except for the category of pre-1973 motor vehicles. The bill would eliminate those repair categories.

The Administrative Code contains further provisions regarding certification, and has two separate classifications of certification and repair categories: automobiles and light trucks, and heavy-duty trucks. The bill would incorporate these separate classifications.

The bill would allow the Administrator to issue certification to perform repair work as a specialty or master mechanic in one or more of the following automobile and light truck repair categories:

- Engine repair.
- Automatic transmission.
- Manual transmission, front and rear drive axle.
- Front end, suspension, and steering systems.
- Brakes and braking systems.
- Electrical systems.
- Heating and air-conditioning.
- Engine tune-up and performance.
- Collision-related mechanical repair.
- Unitized body structural repair.

- Pre-1973 automobile or light truck repair.
- BAIID (breath alcohol ignition interlock device) service.

Additionally, the Administrator could issue certification to perform repair work as a specialty or master mechanic for heavy-duty trucks in one or more of the following repair categories:

- Engine repair, gasoline.
- Engine repair, diesel.
- Drivetrains.
- Brakes and breaking systems.
- Suspension and steering systems.
- Electrical systems.
- Collision-related mechanical repair.
- Pre-1973 heavy-duty truck repair.

An individual who was applying for certification as a specialty automobile or light truck mechanic or a specialty heavy-duty truck mechanic would be eligible for that certification if he or she passed an examination in the repair category that related to that specialty. An individual applying for certification as a master automobile or light truck mechanic or a master heavy-duty truck mechanic would be eligible for that certification if he or she passed the examinations in all automobile or light truck repair categories (excluding collision-related mechanical repair, unitized body structural repair, pre-1973 automobile or light truck repair, or BAIID service) or all heavy-duty truck repair categories (excluding collision-related mechanical repair), respectively.

An individual who was applying for certification as a master motorcycle mechanic would be eligible for that certification if he or she passed an examination pertaining to all mechanical aspects of motorcycle repair. (This provision would be incorporated from the administrative rules.)

An individual who was applying for certification as a recreational trailer mechanic would be eligible for that certification if he or she passed an examination pertaining to all mechanical aspects of the installation, service, and repair of recreational trailer equipment. (This provision would be incorporated from the administrative rules.)

Before an individual may engage in or offer to engage in employment as a specialty or master mechanic, he or she must apply for and receive his or her certification for that employment from the Department of State. An application for a specialty or master mechanic's certificate must be submitted on a form provided by the Department and must include certain information.

Under the bill, the term of a master mechanic's certificate would be one year (as provided under the Administrative Code). An individual could renew a master mechanic's certificate by providing all of the information required under the Act on a form provided by the Administrator, and paying a renewal fee.

Similarly, the term of a specialty mechanic's certificate would be one year (as provided in the Administrative Code). However, an individual could renew a specialty mechanic's certificate by providing all of the information required under the Act on a form provided by the Administrator, paying a renewal fee, and, if applicable, meeting one of the following:

- If he or she were seeking to renew a certification as a mechanic in the area of automobile and light truck engine tune-up and performance, in the 1998 calendar year or in any fifth calendar year after 1998, do one of the following: take and pass a test given or approved by the Administrator; present proof that he or she had successfully completed an acceptable course of training in automobile and light truck engine tune-up and

performance provided by an approved institution, motor vehicle manufacturer, or distributor; or present a valid, current certification in automobile and light truck engine tune-up and performance, or a comparable category, from the National Institute for Automotive Service Excellence or another mechanic certification organization approved by the Administrator.

- If he or she were seeking to renew a certification as a mechanic in the area of automobile and light truck electrical systems, in the 1999 calendar year or in any fifth calendar year after 1999, do one of the following: take and pass a test given or approved by the Administrator; present proof that he or she had successfully completed an acceptable course of training in automobile and light truck engine electrical systems provided by an approved educational institution, motor vehicle manufacturer, or distributor; or present a valid, current certification in automobile and light truck engine electrical systems, or a comparable category, from the National Institute for Automotive Service Excellence or another mechanic certification organization approved by the Administrator.
- If he or she were seeking to renew a certification as a mechanic in the area of automobile and light truck brakes and braking systems, in the 2000 calendar year or in any fifth calendar year after 2000, do one of the following: take and pass a test given or approved by the Administrator; present proof that he or she had successfully completed an acceptable course of training in automobile and light truck engine brakes and braking systems provided by an approved educational institution, motor vehicle manufacturer, or distributor; or present a valid, current certification in automobile and light truck engine brakes and braking systems, or a comparable category, from the National Institute for Automotive Service Excellence or another mechanic certification organization approved by the Administrator.

(All of the above conditions for renewal of a specialty mechanic's certificate are found in the Administrative Code.)

Under the Act, an examination designed to test the competency to diagnose and repair motor vehicles in the specific category for which the applicant is applying may be written, oral, or practical. The bill would require an examination to be written, but permit the Administrator to allow an individual to take an oral or practical examination if the Administrator determined that the individual met one of the following:

- He or she had special language problems that precluded the possibility of passing a standard English language examination.
- He or she was unsuccessful on the written examination.

The bill would require an examination to be given at places and times determined by the Administrator, and provides that the results of an examination would not be final until approved by the Administrator. The Administrator would have to forward the results of an examination to the applicant or to the applicant's authorized representative. (These provisions would be incorporated from the Administrative Code.)

A certified specialty or master mechanic or mechanic trainee could not depart from, or disregard in any material respect, accepted motor vehicle repair industry standards. Compliance with the published vehicle manufacturer, parts manufacturer, equipment manufacturer, or recognized aftermarket repair manual specifications would create a presumption that the mechanic or mechanic trainee had followed accepted motor vehicle repair industry standards.

If the Administrator, after notice and a hearing, determined that a specialty or master mechanic or mechanic trainee had violated the accepted industry standards, the Administrator could require that the mechanic or trainee do both of the following:

- Successfully complete a designated training course or program as a prerequisite to continued certification.
- Perform only specific motor vehicle repairs or repair procedures identified by the Administrator until the training course or program was completed.

Mechanic Trainee Permit

Under the Act, if an individual is unable to obtain a certificate as a specialty or master mechanic and desires to become certified as either, he or she may apply for a mechanic trainee permit on a form prescribed or approved by the Administrator.

Under the bill, if an individual were unable to renew a specialty certification as a mechanic in the area of automobile and light truck engine tune-up and performance, automobile and light truck electrical systems, or automobile and light truck brakes and braking systems because he or she did not meet the requirements listed above, he or she could apply for a mechanic or trainee permit on a form prescribed or approved by the Administrator, if he or she met all legal requirements for the permit and had not been issued a mechanic trainee permit in the three-year period before the Administrator received his or her application for the mechanic trainee permit. (These provisions would be incorporated from the Administrative Code.)

Under the Act, an individual who qualifies as a mechanic trainee may retain that status for a maximum of two years. A trainee who is employed by a motor vehicle repair facility is required to work under the direct supervision of a specialty or master mechanic during the full time of his or her employment.

The Administrator is required to establish and operate a mechanic trainee training program designed to provide the training necessary to become certified. Instead of establishing and operating the program, however, the Administrator may appoint schools, academies, or other similar establishments to engage in mechanic trainee training if those establishments, schools, or academies meet the criteria established by the Administrator. The establishments may be designated by the Administrator to engage in a continuing education and training program for specialty and master mechanics. The bill would delete those requirements and require the Administrator to select one or more approved educational institutions to engage in mechanic trainee training.

Training Institutions

Under the bill, the Administrator would have to evaluate and could approve a school, academy, or other similar establishment that intended to provide training to mechanics or mechanic trainees. All of the following would apply to the approval of a school, academy, or similar establishment:

- An establishment seeking approval would have to submit an application for approval to the Administrator.
- The Administrator would have to determine the form and content of the application, and the application would have to include supporting materials required by the Administrator.
- The Administrator would have to review an application and all submitted materials and approve, deny, or withdraw approval from the training program offered to mechanics and mechanic trainees by the establishment.

In evaluating the establishment for approval, the Administrator would have to consider accreditation or lack thereof by a recognized accreditation agency; quantity and quality of classroom training provided; course objectives; number, quality, and age of tools, equipment, and materials available to the students; percentage of class time spent in hands-on training; qualifications of instructors and other staff; quality, quantity, and accessibility of records

maintained by the establishment; class and school size; quality of administered testing; and other related factors the Administrator considered relevant.

The Administrator could contract with approved educational institutions to provide training or testing required under the Act.

(The above provisions relating to training and prospective training institutions are found in the Administrative Code.)

Certificate & Sign Display

The bill would codify provisions relating to mechanic certificate display found in the Administrative Code. The bill would require a certified specialty or master mechanic to display, in a conspicuous location in the place of business where he or she was employed or engaged to perform repairs, a current and valid certificate issued by the Administrator. If a certified mechanic worked on, inspected and approved, or supervised a repair, he or she would have to affix his or her name and certification number, to the written statement of repairs given to the customer.

The bill also would incorporate provisions from the Administrative Code regarding the display of certificates and signs for a facility. Under the bill, a motor vehicle repair facility would have to display at all times, in a place and manner conspicuous to its customers, a current and valid certificate of repair facility registration issued by the Administrator. A facility would have to include its registration number on each copy of any instrument, form, contract, or other document it used in dealing with the public in the repair of motor vehicles, including all of the following:

- Any document on which the facility routinely required the customer's signature.
- Any document used by the facility in connection with providing estimates, diagnoses, or repairs.
- Any invoices, warranties, or waivers.
- Any other document used by the facility to comply with the Act or rules.

A facility would have to display a consumer information sign worded as follows: "This establishment is registered with the Michigan Department of State and is required by law to furnish a customer with a: (1) Written estimate if repairs will be \$50 or more or on request if repairs will be less than \$50. (2) Detailed statement of labor and parts supplied. Questions regarding service should be directed first to the manager of this repair facility."

The bill specifies the address and website to be used, as well as the dimensions, material, color, and font of the sign, and the location of additional State contact information on the sign.

A facility would have to display the sign at each entrance to the facility and at each cashier station. The facility would have to ensure that the sign was unobstructed and clearly and readily visible to customers. If the facility were not enclosed or were a mobile facility, it would have to ensure that the sign was placed in an area where it was easily noticeable to customers who were transacting business with the facility. The Administrator could require that a facility replace any sign that did not meet all of the requirements or was no longer readily legible, or require that the facility reposition any sign that was improperly displayed.

Motor Vehicle Repair Facility Registration

The Act requires an owner of a motor vehicle repair facility to register the facility and provide certain information on a registration form provided by the Administrator, and pay a fee.

The information that the owner of a motor vehicle repair facility must provide includes the principal occupation for the past five years of every officer, director, and partner, and each owner of 10% or more of the facility, and any person occupying a similar status or performing similar functions. The bill would delete this provision. Instead, the bill would require the facility owner to provide the principal occupation or business for the past five years of all of the following, as applicable:

- Each person that owned 10% or more of the facility.
- For each person owning 10% or more of the facility, every officer and director if the owner were a corporation; every partner if the owner were a partnership; and any other person who occupied a similar status or performed similar functions.

The required information also includes a description of the facility. Under the bill, a description would have to include all of the following:

- The type of service business the facility operated.
- The type of repairs the facility performed.
- The type of vehicles the facility serviced.
- The number of mechanics the facility employed who performed repairs.
- The range of gross revenue received by the facility from performing repairs, including revenue from parts and goods sold in conjunction with the repairs, for the most recent Federal income tax year.
- Measured in square feet, the size of that part of the facility used for performing repairs.

In addition, the owner of the facility must provide a copy of the documents, instruments, forms, contracts, or other papers known to be used by the applicant in dealing with the public in the repair of motor vehicles. The bill also would require the following:

- Any document on which the facility routinely required the customer's signature.
- Any document used by the facility in connection with providing estimates, diagnoses, or repairs.
- Any invoices, warranties, or waivers.
- Any other document used by the facility to comply with the Act or rules.

(With some exceptions, the above provisions are found in the Administrative Code.)

The bill states that a motor vehicle repair facility registration would take effect on the date it was approved by the Administrator and would expire one year after that date. The owner of a facility would have to renew its registration annually and would have to submit an application for renewal of the registration, accompanied by a registration fee in an amount determined under the Act, to the Administrator at least 30 days before its current registration expired. A facility could continue to operate after that expiration date, pending approval of the renewal application by the Administrator, if the Administrator received the renewal application and renewal fee by the expiration date. If a renewal application and renewal fee were filed after the expiration date, the facility could operate from the day on which the Administrator received the application and appropriate fee, pending approval of the application. The Administrator would have to charge a fee of 1-1/2 times the normal registration fee if the renewal application were received after the expiration date. (These provisions are found in the Administrative Code.)

The Act requires the owner of a registered motor vehicle repair facility to ensure that the facility is open to inspection by the Administrator and other law enforcement officials during reasonable business hours. The bill would define "reasonable business hours" as including any posted or advertised business hours of a facility.

Change in Ownership

The Act states if a name or address of the motor vehicle repair facility changes, not involving a change of ownership, the facility must notify the Administrator in writing of the change, with appropriate changes being made on the next registration renewal. Under the bill, if there were a change in ownership of a motor vehicle repair facility, a new registration and payment of a new registration fee would be required and the facility could not operate until the Administrator approved its registration application.

If an owner of a motor vehicle repair facility were a corporation, and 10% or more of the stock of the corporation were sold or transferred, the owner would have to notify the Administrator of that change within 30 days of the sale or transfer. "Change of ownership" would mean a sale of all or part of a facility to a new owner, and would include a sale or transfer of a partnership interest in the owner of a facility if the owner is a partnership. The term would not include the sale or transfer of stock in the owner of a facility if the owner is a corporation.

(These provisions, excluding the definition, are found in the Administrative Code.)

Maintenance of Records

The Act contains provisions regarding records that a motor vehicle repair facility must maintain. The records must be open for reasonable inspection by the Administrator or law enforcement officials, and be maintained by the facility for at least five years. The bill would delete the five-year requirement and include new provisions from the Administrative Code.

Under the bill, the owner of a motor vehicle repair facility would have to retain copies of each instrument, form, contract, or other document used in connection with a repair transaction, including all of the following for at least one year after completion of the repair transaction:

- Any document on which the facility required the customer's signature.
- Any document used by the facility in connection with providing an estimate, diagnosis, or repair.
- Any invoice, warranty, or waiver.
- Any other document used by the facility to record or convey the terms of the transaction.
- Any other document required under the Act or rules in connection with a repair transaction.

If the Administrator advised a facility that he or she had received a complaint about a repair transaction performed by the facility, and the facility were under investigation by the Administrator, the owner would have to retain records relating to the transaction or otherwise relevant to the complaint until the date the Administrator advised the facility in writing that the complaint was closed, or for three years after the completion of the repair transaction, whichever was later.

If a repair transaction involved the assumption by the facility of an obligation extending beyond three years, the owner would have to retain records or documents relating to that obligation for at least the term of the obligation.

For any document or record other than those described above, the owner would have to retain that document or record for at least three years.

Replacement of Registration, Certificate, or Permit

Under the Act, in the event of the loss, destruction, or mutilation of a registration, certificate, or trainee permit, the person to whom it was issued may obtain a replacement by furnishing

satisfactory proof of the loss, destruction, or mutilation and paying the fee as determined under the Act. The bill would codify administrative rules and require an application for a replacement registration, certificate, or trainee permit to include the name and address of the applicant, and an explanation of the loss, destruction, or mutilation of the original document.

Mechanic Certification Renewal

Under the Act, registrations and certificates including mechanic trainee permits must be renewed as determined by rule. The bill would delete that provision and incorporate provisions from the Administrative Code. The bill states that certification as a specialty or master mechanic under the Act would take effect on the date it was approved by the Administrator, and would expire one year after that date. A specialty or master mechanic could annually renew his or her certification by submitting an application for renewal, accompanied by the certification fee described in the Act, with the Administrator by the expiration date of his or her current certification.

A mechanic could continue to function as a certified mechanic after his or her certification expired, pending approval of the renewal application by the Administrator, if the Administrator received the renewal application and renewal fee by the expiration date. If a renewal application and renewal fee were filed after the expiration date, the mechanic could temporarily engage in repairs without a certificate from the day on which the Administrator received the application and appropriate fee, pending approval of the renewal application. The Administrator would have to charge a fee of 1-1/2 times the normal renewal fee if he or she received the renewal application after the expiration date.

Fees

The fee for the registration of a motor vehicle repair facility is determined by a sliding fee scale that is based on gross annual revenue of a facility and is listed in the Act. The bill would retain this fee scale.

The fee for the certification of specialty and master mechanics and the permit fee for mechanic trainees must be set by rule. The fee for the renewal of the registration of a facility, certification of a specialty or master mechanic, including a permit of a mechanic trainee, must be set by rule. The effective length of original and renewal registrations, certificates, and permits must be set by rule and may not be less than one year in duration. The renewal fee for a registration, certificate, or permit that has expired must be 1-1/2 times the fee for the renewal of a registration, certificate, or permit that has not expired. The bill would delete these provisions.

Instead, the bill would incorporate several provisions from the Administrative Code. The examination, application, certificate, and renewal fees for the certification of mechanics would be as follows:

- Each certification examination administered by the Administrator: \$6.
- Application for renewal certificate: \$5.
- Replacement certificate: \$5.

Application for an original certificate would be \$25. However, any of the following could apply for an original specialty or master mechanic certificate without paying a fee:

- An individual currently certified by the Administrator in at least one repair category, who could apply for certification in one or more additional repair categories without paying a fee.
- A mechanic trainee who presented proof that he or she had successfully completed 30 or more hours of continuing mechanic education course given by an approved educational

institution during the five-year period immediately before the trainee submitted the application for certification.

- An individual who served in the armed forces; was separated from that service; and provided to the Administrator a form satisfactory to the Administrator that demonstrated that the individual was separated from that service, with an honorable character of service or under honorable conditions (general) character of service.

The application fee for a mechanic trainee permit would be \$20. However, either of the following could apply for a mechanic trainee permit without paying a fee:

- An individual who was currently certified by the Administrator in at least one repair category.
- A student who was currently enrolled in a vocational education or special education program that included employment by a motor vehicle repair facility; that was approved by the Department of Education; and for which the student received credit toward the award of a high school or special education diploma.

The replacement of a trainee permit would cost \$5.

Minimum Cost for Written Estimate

Under the Act, before beginning repair work, a motor vehicle repair facility is required to give to the customer a written estimate that itemizes as closely as possible the price for labor and parts necessary for a specific job. A facility may not charge for work done or parts supplied in excess of the estimated price, or in excess of the limit stated by the customer in the waiver described under the Act, without the knowing written or oral consent of the customer, which must be obtained at some time after the facility determines that the estimated price or stated limit is insufficient and before any work not estimated or in excess of the limit is done or the parts not estimated or in excess of the limit are supplied. If a waiver is not signed and the estimated price is exceeded by not more than 10% or \$10, whichever is less, the facility is not required to obtain the consent of the customer for the excess charge unless specifically requested by the customer. The bill would increase the minimum estimated price at which the facility is required to obtain written or oral consent of the customer for excess charges, from \$10 to \$50.

Under the Act, unless otherwise requested by the customer, the requirement to provide a written estimate does not apply to repair work performed by a motor vehicle repair facility when the total cost for the services and parts is less than \$20. The bill would increase this amount to \$50.

Replaced Parts

The Act requires the Administrator to determine by rule the time and manner in which a motor vehicle repair facility must return replaced parts to the customer upon completion of the work. The requirement does not apply to parts exempted by the Administrator because of size, weight, or similar factors or parts that the facility or mechanic is required to return to the manufacturer or distributor under a warranty or exchange arrangement. If the parts must be returned to the manufacturer or distributor, the facility or mechanic must offer to show and, upon acceptance of the offer or upon request, must show the parts to the customer upon completion of the work, unless a charge is not being made for a replacement part.

The bill would amend these provisions and incorporate provisions from the Administrative Code. The bill would delete the requirement that the Administrator determine by rule the time and manner in which parts must be returned to the customer. Instead, the bill would require the facility to return the replaced parts once the repair work was completed, except for parts that were exempted from the return requirement by the Administrator because of size,

weight, or similar factors. However, a facility could not prevent a customer from removing any heavy or large part, by the customer's own means and at his or her expense.

A facility would not be required to return, for reasons of safety, a gasoline tank or any other container-type part that was filled with or was otherwise in appreciable contact with flammable fuels, unless that part was rendered nonflammable. If any returned part presented an actual danger of flammability or explosiveness, the facility would have to clearly inform the customer of the danger.

When the repair work was completed, if requested by the customer, the facility would have to reasonably clean the replaced parts that were to be returned or inspected by the customer. The facility would have to place portable parts in a suitable container, and would have to store any parts that it identified as not portable in a suitable place in the facility for the customer's inspection.

If a facility charged a fee to a customer in connection with the return of replaced parts, the facility would have to disclose that fee to the customer in writing before the customer engaged the facility to replace the part.

Under the Act, a customer must be informed of his or her right to receive or see replaced parts before the customer executes any document or engages the facility or mechanic for the work. The information must be given to the customer on the face of any contract, work order form, sign, or other document evidencing the engagement of the facility or mechanic, or by separate written document, in at least 12-point boldface type. The bill includes a paragraph describing the rights of the customer to the return of all parts replaced, except those that would be too heavy or large, and those required to be sent back to a manufacturer or distributor because of warranty work or exchange, that the facility would have to give to the customer.

If replacement of a part were contingent on the facility's keeping the part under an exchange agreement, the facility would have to explain, in a manner understandable to the customer, the precise terms of the exchange agreement, including a disclosure of the price to the customer if he or she wished to reclaim the part, if applicable. If a customer raised a question or disputed with the facility within two business days after the delivery of the repaired vehicle to the customer and the dispute involved an exchange part for which the facility required the customer to pay a deposit in the amount of the facility's obligation, the facility would have to refund the deposit to the customer if he or she returned the part to the facility. (These provisions would be incorporated from the Administrative Code.)

A facility that displayed a notice describing a customer's right to the return of replaced parts on a clearly legible sign with lettering at least one inch high, conspicuously displayed in the part of the facility where customers routinely contract for repairs, would not be required to provide the notice to a customer in the form of a document. (This provision would be incorporated from the Administrative Code.)

A facility could not dispose of parts that were not returned to the customer for at least two business days after the customer took possession of the repaired vehicle, unless the customer had specifically authorized immediate disposition of the parts. If the customer questioned or disputed repairs performed by a facility or the charges for those repairs within two days after taking possession of the repaired vehicle, the facility could not dispose of the replaced parts until the question or dispute was resolved. If the dispute involved the replaced part, the facility would be required, in the presence of the customer, immediately affix to the part a permanent mark sufficient to identify the part. (These provisions would be incorporated from the Administrative Code.)

The Administrative Code provides that, if requested by a customer, a facility is required to explain exactly why a replaced part was defective or nonfunctional, or otherwise why it was replaced. The bill would codify this provision.

MCL 257.1302 et al.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State and local government. It is currently a misdemeanor punishable by imprisonment for up to 90 days and a fine of up to \$1,000, or both, for a first offense, for any person, agent, or employee of a registrant to knowingly violate the Act. A subsequent conviction is punishable by up to one year's imprisonment and a fine of up to \$5,000, or both. It is unknown whether the changes in the bill would lead to a change in the number of misdemeanor arrests and convictions under the Act.

An increase in misdemeanor arrests and convictions could place incremental resource demands on local court systems, law enforcement, probation offices, and jails. Any associated increase in fine revenue would be dedicated to public libraries.

Conversely, a decrease in misdemeanor arrests and convictions could reduce incremental resource demands on local court systems, law enforcement, probation offices, and jails. Any associated decrease in fine revenue would reduce funding to public libraries.

The bill would have no fiscal impact on the Department of State.

Fiscal Analyst: Ryan Bergan
Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.