S T A T E O F N E W Y O R K

903

2009-2010 Regular Sessions

I N S E N A T E

January 21, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to motor vehicle repair shop requirements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 398-d of the vehicle and traffic law, as added by chapter 946 of the laws of 1974, subdivision 1 as amended and subdivisions 6 and 7 as added by chapter 161 of the laws of 1996, subdivision 2 as amended by chapter 173 of the laws of 1990, subdivision 4 as amended by chapter 805 of the laws of 1984, paragraph (a) of subdivision 4 as amended by chapter 130 of the laws of 2001, subdivision 5 as amended by chapter 257 of the laws of 1995, subdivision 5-a as added by chapter 166 of the laws of 1991 and paragraph (e) of subdivision 6 as amended by chapter 78 of the laws of 1998, is amended to read as follows:

S 398-d. Motor vehicle repair shop requirements. 1. (A) All work done by a motor vehicle repair shop shall be recorded on an invoice and shall describe all service work done and parts supplied. If any used parts are supplied, the invoice shall clearly state that fact. If any component system installed is composed of new and used parts, such invoice shall clearly state that fact. If any body parts are supplied to a vehicle with a gross vehicle weight not in excess of eighteen thousand pounds, the invoice shall clearly state whether such parts were manufactured as original equipment parts for the vehicle, or were manufactured as non-original replacement parts or are used parts. One copy of the invoice shall be given to the customer and one copy shall be retained by the motor vehicle repair shop. For the purposes of insuring that the repairs described on the work invoice have been performed, every customer and his representative or a representative of an insurance company where such company has paid or is liable to pay a claim for damage to such customer's motor vehicle shall have a right to inspect the repaired

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD06445-01-9

motor vehicle. Such right of inspection shall also include the right to inspect all replaced parts and components thereof, except warranty or exchange parts. Provided, however, the exception for warranty or exchange parts from the right of inspection shall not apply to replacement inflatable restraint systems. Any such inspection by an insurer shall be made in a manner consistent with the requirements of sections two thousand six hundred one and three thousand four hundred eleven of the insurance law. The motor vehicle repair shop shall make available to the customer, upon timely written demand, or for such work authorized over the telephone, shall keep until the customer's motor vehicle is retrieved, all replaced parts, components or equipment excepting any parts, components or equipment normally sold on an exchange basis or subject to a warranty.

(B) THE INVOICE SHALL CLEARLY STATE: (I) THE MOTOR VEHICLE REPAIR SHOP'S REGISTRATION NUMBER AND THE CORRESPONDING BUSINESS NAME, ADDRESS AND TELEPHONE NUMBER;

(II) SEPARATELY THE SUBTOTAL PRICES FOR 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;

(III) THE ACTUAL TIME EXPENDED FOR EACH REPAIR OR SERVICE PERFORMED AND HOW THE LABOR CHARGE WAS COMPUTED. WHERE THE LABOR CHARGE WAS BASED ON A FLAT RATE CALCULATION, THE INVOICE SHALL INDICATE THE MANUAL USED AND THE MANUAL TIME FOR EACH REPAIR OR SERVICE PERFORMED. THE INVOICE SHALL ALSO CONTAIN A STATEMENT THAT UPON THE CUSTOMER'S REQUEST, HE SHALL BE SHOWN THE APPROPRIATE SECTION OF THE MANUAL;

(IV) WHAT WORK AND PARTS SUPPLIED ARE COVERED BY WARRANTY OR GUARANTEE AND THE DURATION OF THE WARRANTY OR GUARANTEE AND WHAT PROCEDURES MUST BE FOLLOWED BY THE CUSTOMER IN ORDER TO HAVE THE WARRANTY OR GUARANTEE HONORED. THE INVOICE SHALL CLEARLY STATE ALL CONDITIONS AND LIMITATIONS AND EXACTLY WHAT THE MOTOR VEHICLE REPAIR SHOP OR GUARANTOR WILL DO UNDER THE WARRANTY OR GUARANTEE; AND

(V) THE RIGHTS OF CUSTOMERS UNDER THE MOTOR VEHICLE REPAIR SHOP REGISTRATION ACT. SUCH STATEMENT OF RIGHTS, WHICH SHALL BE PRESCRIBED BY THE COMMISSIONER, SHALL INCLUDE BUT SHALL NOT BE LIMITED TO THE FOLLOWING: THAT THE STATUTE PROHIBITS CHARGES GREATER THAN ESTIMATED WITHOUT THE CUSTOMER'S CONSENT, THE APPLICABLE STATUTE OF LIMITATIONS FOR FILING A COMPLAINT AND THE COMPLAINT PROCESS.

2. Upon the request of any customer, a motor vehicle repair shop shall make an estimate in writing of the parts and labor necessary for a specific job and shall not charge for work done or parts supplied in excess of the estimate without the ORAL OR WRITTEN consent of such customer WHICH SHALL BE OBTAINED AT SOME TIME AFTER IT IS DETERMINED THAT THE ESTIMATED PRICE IS INSUFFICIENT AND BEFORE THE WORK NOT ESTIMATED IS DONE OR THE PARTS NOT ESTIMATED ARE SUPPLIED. IF SUCH CONSENT IS ORAL, THE MOTOR VEHICLE REPAIR SHOP SHALL MAKE A NOTATION ON THE WORK ORDER AND INVOICE OF THE DATE, TIME, NAME OF PERSON AUTHORIZING THE ADDITIONAL WORK AND TELEPHONE NUMBER CALLED, IF ANY, TOGETHER WITH A SPECIFICATION OF THE ADDITIONAL PARTS AND LABOR AND THE TOTAL ADDITIONAL COST. UPON COMPLETION OF THE WORK, THE MOTOR VEHICLE REPAIR SHOP SHALL OBTAIN THE CUSTOMER'S SIGNATURE OR INITIALS TO ACKNOWLEDGE NOTICE AND CONSENT WHERE THERE IS AN ORAL CONSENT OF THE CUSTOMER TO ADDITIONAL WORK. THE ESTIMATE SHALL PROVIDE A DIAGNOSIS OF THE PROBLEM NEEDING REPAIR OR SERVICE AND SHALL CLEARLY INDICATE WHAT REPAIRS OR SERVICES

DEVIATE FROM THE REPAIR OR SERVICE SCHEDULE IN THE OWNER'S MANUAL ISSUED BY THE MANUFACTURER OF THE MOTOR VEHICLE OR IF NO MANUFACTURER'S SPECIFICATIONS EXIST, ACCEPTED TRADE STANDARDS. THE ESTIMATE SHALL ALSO EXPLAIN HOW THE LABOR CHARGE WAS COMPUTED. WHERE THE LABOR CHARGE WAS BASED ON A FLAT RATE CALCULATION, THE ESTIMATE SHALL INDICATE THE MANUAL USED AND THE MANUAL TIME FOR EACH REPAIR OR SERVICE. The motor vehicle repair shop may charge a reasonable fee for making an estimate. If any body parts are included in the estimate for a vehicle with a gross vehicle weight not in excess of eighteen thousand pounds, the estimate shall clearly state whether such parts were manufactured as original equipment parts for the vehicle, or were manufactured as non-original replacement parts or are used parts. IF IT IS NECESSARY TO DISASSEMBLE A VEHICLE COMPONENT IN ORDER TO PREPARE A WRITTEN ESTIMATE FOR REQUIRED WORK, THE MOTOR VEHICLE REPAIR SHOP SHALL, UPON REQUEST OF THE CUSTOMER, GIVE THE CUSTOMER A WRITTEN ESTIMATE FOR THE ACT OF DISASSEMBLY. THIS PRICE SHALL INCLUDE THE COST OF REASSEMBLY OF THE COMPONENT AND THE COST AND LABOR NECESSARY TO REPLACE ANY PARTS DESTROYED BY THE ACT OF DISASSEMBLY OF THE COMPONENT. IF THE ACT OF DISASSEMBLY MIGHT PREVENT THE RESTORATION OF THE COMPONENT TO ITS FORMER CONDITION, THE MOTOR VEHICLE REPAIR SHOP SHALL WRITE THAT INFORMATION ON THE ESTIMATE. THE MOTOR VEHICLE REPAIR SHOP SHALL NOTIFY THE CUSTOMER ORALLY AND IN THE ESTIMATE THE MAXIMUM TIME IT WILL TAKE TO REASSEMBLE THE MOTOR VEHICLE OR THE VEHICLE COMPONENT IN THE EVENT THE CUSTOMER ELECTS NOT TO PROCEED WITH THE WORK AND SHALL REASSEMBLE THE MOTOR VEHICLE WITHIN THAT TIME PERIOD IF THE CUSTOMER ELECTS NOT TO PROCEED WITH THE WORK. UPON REQUEST OF THE CUSTOMER, AFTER THE ACT OF DISASSEMBLY HAS BEEN PERFORMED, THE MOTOR VEHICLE REPAIR SHOP SHALL PREPARE A WRITTEN ESTIMATE FOR THE PARTS AND LABOR NECESSARY FOR THE SPECIFIC JOB. THE MOTOR VEHICLE REPAIR SHOP SHALL INCLUDE WITH THE ESTIMATE A STATEMENT OF ANY WORK WHICH, IF REQUIRED TO BE DONE, WILL BE DONE BY SOMEONE OTHER THAN THE MOTOR VEHICLE REPAIR SHOP OR AN EMPLOYEE. NO WORK SHALL BE DONE BY OTHER THAN THE MOTOR VEHICLE REPAIR SHOP OR AN EMPLOYEE WITHOUT THE WRITTEN OR ORAL CONSENT OF THE CUSTOMER. IF SUCH CONSENT IS ORAL, THE MOTOR VEHICLE REPAIR SHOP SHALL MAKE A NOTATION ON THE WORK ORDER AS DESCRIBED ABOVE. THE MOTOR VEHICLE REPAIR SHOP SHALL BE RESPONSIBLE, IN ANY CASE, FOR ANY SUCH WORK IN THE SAME MANNER AS IF THE MOTOR VEHICLE REPAIR SHOP OR AN EMPLOYEE HAS DONE THE WORK.

3. EACH MOTOR VEHICLE REPAIR SHOP THAT PROVIDES SERVICE OR MAINTENANCE SCHEDULES TO A CUSTOMER FOR THE PURPOSE OF RECOMMENDING OR SELLING SPECIFIC MOTOR VEHICLE REPAIR PRODUCTS OR SERVICES SHALL ISSUE TO THE CUSTOMER ONLY THE SERVICE OR MAINTENANCE SCHEDULE THAT IS APPROPRIATE FOR THE MAKE AND MODEL OF THE CUSTOMER'S MOTOR VEHICLE.

4. Each motor vehicle repair shop shall maintain such records as are required by the regulations of the commissioner and such records shall be available for inspection by the commissioner or his designee during all business hours. Where a motor vehicle repair shop changes its name or location, notification thereof shall be given to the commissioner not more than ten days therefrom. UPON WRITTEN REQUEST OF ANY CUSTOMER, EACH MOTOR VEHICLE REPAIR SHOP SHALL MAKE AVAILABLE SERVICE RECORDS, PARTS PURCHASE ORDERS AND OTHER RECORDS REQUIRED BY REGULATIONS OF THE COMMISSIONER AT A REASONABLE CHARGE PRESCRIBED BY THE COMMISSIONER FOR THE PERIOD OF TIME THE RECORDS ARE REQUIRED TO BE MAINTAINED BY THE REGULATIONS OF THE COMMISSIONER.

[4] 5. (a) Every motor vehicle repair shop shall display in a conspicuous place in such shop a sign stating: PURSUANT TO SECTION 2610 OF THE INSURANCE LAW AN INSURANCE COMPANY MAY NOT REQUIRE THAT REPAIRS

BE MADE TO A MOTOR VEHICLE IN A PARTICULAR PLACE OR REPAIR SHOP. YOU HAVE A RIGHT TO HAVE YOUR AUTOMOBILE REPAIRED IN THE SHOP OF YOUR CHOICE.

(b) Such sign shall be made of a durable material capable of withstanding outdoor climatic conditions, with the letters being at least two inches high and having a stroke of at least one-half inch. The letters and background shall be of contrasting colors.

[5] (C) EVERY MOTOR VEHICLE REPAIR SHOP SHALL DISPLAY IN A CONSPICUOUS PLACE IN SUCH SHOP A SIGN STATING THE RIGHTS OF CUSTOMERS UNDER THE MOTOR VEHICLE REPAIR SHOP REGISTRATION ACT. SUCH INFORMATION SHALL INCLUDE BUT SHALL NOT BE LIMITED TO: THE RIGHT TO A WRITTEN ESTIMATE FOR REPAIR WORK OR SERVICES, UPON REQUEST BY THE CUSTOMER, THAT ONLY WORK AUTHORIZED BY THE CUSTOMER CAN BE PERFORMED, THE RIGHT TO A DETAILED INVOICE STATING THE WORK PERFORMED AND THE PARTS SUPPLIED INCLUDING A DETAILED DESCRIPTION OF THE WARRANTY OR GUARANTEE WHERE APPLICABLE, THAT THE ACT PROHIBITS CHARGES GREATER THAN THE ESTIMATE WITHOUT THE CUSTOMER'S CONSENT AND THE RIGHT TO INSPECT ALL REPLACED PARTS AND COMPONENTS, EXCEPT WARRANTY, GUARANTEE OR EXCHANGE PARTS, UPON TIMELY WRITTEN DEMAND. SUCH A SIGN SHALL BE MAINTAINED IN A MANNER AND FORM PRESCRIBED BY THE COMMISSIONER. NOTWITHSTANDING, SUCH SIGN MAY BE INCORPORATED INTO ANOTHER SIGN PROVIDED THAT THE LETTERS ARE AT LEAST TWO INCHES HIGH AND HAVE A STROKE OF AT LEAST ONE-HALF INCH.

6. Every person who shall write any auto body repair estimate on behalf of a motor vehicle repair shop, whether registered or not, must hold a valid estimator's license for such purpose issued by the commissioner. The form and manner of applying for such license shall be prescribed by regulation to be promulgated by the commissioner. The commissioner shall in the commissioner's discretion establish criteria for the issuing of such license. Each application for the license required hereunder shall be accompanied by an application fee of twenty-five dollars which shall in no event be refunded. If an application is approved by the commissioner, upon payment by the applicant of the additional fee of one hundred fifty dollars, the applicant shall be granted such license which shall be valid for a period of three years. The renewal fee for any license issued pursuant to this subdivision shall be one hundred fifty dollars.

[5-a] 7. All the provisions of section three hundred ninety-eight-f of article twelve-A of this chapter shall apply to the provisions of subdivision [five] SIX of this section with the same force and effect as if the language of those provisions had been incorporated in full into subdivision [five] SIX of this section and had expressly referred to the term collision estimator licensee, except that the term "certificate of registration" shall be read as "estimator's license" and the term "registrant" as "licensee".

[6] 8. (a) In addition to the requirements of subdivision one of this section, if an inflatable restraint system is replaced, the motor vehicle repair shop shall state on the repair invoice the name and tax identification number from whom such replacement inflatable restraint system was purchased. The vehicle repair shop shall, in the case of any salvaged inflatable restraint system installed, also state on the repair invoice the vehicle dismantler's registration number, the vehicle identification number of the vehicle from which the inflatable restraint system was salvaged and the part number of the salvaged inflatable restraint system. The insurer and the consumer shall receive a copy of the purchase invoice for such replacement inflatable restraint systems.

(b) An inflatable system which has been activated in a crash or stolen shall be replaced only with an inflatable restraint system newly manufactured for first-time use.

(c) Notwithstanding the provisions of paragraph (b) of this subdivision, an inflatable restraint system may be replaced by one salvaged and sold by a vehicle dismantler registered pursuant to section four hundred fifteen-a of this chapter, provided, however, that the salvaged inflatable restraint system has been sold in accordance with the provisions of section four hundred fifteen-c of this chapter.

(d) Notwithstanding any other provisions of law to the contrary, a consumer has the right to seek installation of a salvaged inflatable restraint system as provided in paragraph (c) of this subdivision, provided however, nothing shall require any facility to install a salvaged inflatable restraint system. A salvage installation shall only be done with the specific authorization of the customer. The invoice must prominently state, "Salvage inflatable restraint system." No other terms such as "used" or "as is" shall be used. The invoice must clearly state the terms of the warranty or guarantee, if given, or state "No warranty or guarantee given." A salvaged inflatable restraint system must be of the exact same type as the unit with which the vehicle was originally equipped.

(e) On and after March first, nineteen hundred ninety-nine, in no case shall any inflatable restraint system be replaced with anything other than a newly manufactured inflatable restraint system or a salvaged inflatable restraint system certified according to standards established by a nationally recognized testing, engineering and research body as provided for in subdivision two of section four hundred fifteen-c of this chapter.

[7] 9. Each motor vehicle repair shop which either removes or installs inflatable restraint systems shall maintain a log book containing the following information: (a) the date of installation, (b) the vehicle identification number, license plate number, and make and model of the repaired vehicle, (c) the replacement inflatable restraint system's part number, (d) in the case of a salvaged inflatable restraint system, (1) the vehicle identification number of the vehicle from which the replacement inflatable restraint system was salvaged, and (2) the name, tax identification number, and registration number of the automobile dismantler from whom such salvaged inflatable restraint system was purchased, (e) in the case of a new replacement inflatable restraint system, the name and tax identification number of the supplier. Such records shall be maintained in a manner and form prescribed by the commissioner. Upon request of an agent of the commissioner or of any police officer and during its regular and usual business hours, the motor vehicle repair shop shall produce such records and permit said agent or police officer to examine them.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.