

1949

2011-2012 Regular Sessions

I N S E N A T E

January 14, 2011

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:

1 Section 1. Section 398-d of the vehicle and traffic law, as added by  
2 chapter 946 of the laws of 1974, subdivision 1 as amended and subdivi-  
3 sions 6 and 7 as added by chapter 161 of the laws of 1996, subdivision 2  
4 as amended by chapter 173 of the laws of 1990, subdivision 4 as amended  
5 by chapter 805 of the laws of 1984, paragraph (a) of subdivision 4 as  
6 amended by chapter 130 of the laws of 2001, subdivision 5 as amended by  
7 chapter 257 of the laws of 1995, subdivision 5-a as added by chapter 166  
8 of the laws of 1991 and paragraph (e) of subdivision 6 as amended by  
9 chapter 78 of the laws of 1998, is amended to read as follows:  
10 S 398-d. Motor vehicle repair shop requirements. 1. (A) All work done  
11 by a motor vehicle repair shop shall be recorded on an invoice and shall  
12 describe all service work done and parts supplied. If any used parts are  
13 supplied, the invoice shall clearly state that fact. If any component  
14 system installed is composed of new and used parts, such invoice shall  
15 clearly state that fact. If any body parts are supplied to a vehicle  
16 with a gross vehicle weight not in excess of eighteen thousand pounds,  
17 the invoice shall clearly state whether such parts were manufactured as  
18 original equipment parts for the vehicle, or were manufactured as non-  
19 original replacement parts or are used parts. One copy of the invoice  
20 shall be given to the customer and one copy shall be retained by the  
21 motor vehicle repair shop. For the purposes of insuring that the repairs  
22 described on the work invoice have been performed, every customer and  
23 his representative or a representative of an insurance company where  
24 such company has paid or is liable to pay a claim for damage to such  
25 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.

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

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

17 (II) SEPARATELY THE SUBTOTAL PRICES FOR WORK AND FOR PARTS, NOT  
18 INCLUDING SALES TAX, AND SHALL STATE SEPARATELY THE SALES TAX, IF ANY,  
19 APPLICABLE TO EACH. IF ANY USED, REBUILT OR RECONDITIONED PARTS ARE  
20 SUPPLIED, THE INVOICE SHALL CLEARLY STATE THAT FACT. IF A PART OF A  
21 COMPONENT SYSTEM IS COMPOSED OF NEW AND USED, REBUILT OR RECONDITIONED  
22 PARTS, SUCH INVOICE SHALL CLEARLY STATE THAT FACT;

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

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

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

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

1 DEVIATE FROM THE REPAIR OR SERVICE SCHEDULE IN THE OWNER'S MANUAL ISSUED  
2 BY THE MANUFACTURER OF THE MOTOR VEHICLE OR IF NO MANUFACTURER'S SPEC-  
3 IFICATIONS EXIST, ACCEPTED TRADE STANDARDS. THE ESTIMATE SHALL ALSO  
4 EXPLAIN HOW THE LABOR CHARGE WAS COMPUTED. WHERE THE LABOR CHARGE WAS  
5 BASED ON A FLAT RATE CALCULATION, THE ESTIMATE SHALL INDICATE THE MANUAL  
6 USED AND THE MANUAL TIME FOR EACH REPAIR OR SERVICE. The motor vehicle  
7 repair shop may charge a reasonable fee for making an estimate. If any  
8 body parts are included in the estimate for a vehicle with a gross vehi-  
9 cle weight not in excess of eighteen thousand pounds, the estimate shall  
10 clearly state whether such parts were manufactured as original equipment  
11 parts for the vehicle, or were manufactured as non-original replacement  
12 parts or are used parts. IF IT IS NECESSARY TO DISASSEMBLE A VEHICLE  
13 COMPONENT IN ORDER TO PREPARE A WRITTEN ESTIMATE FOR REQUIRED WORK, THE  
14 MOTOR VEHICLE REPAIR SHOP SHALL, UPON REQUEST OF THE CUSTOMER, GIVE THE  
15 CUSTOMER A WRITTEN ESTIMATE FOR THE ACT OF DISASSEMBLY. THIS PRICE SHALL  
16 INCLUDE THE COST OF REASSEMBLY OF THE COMPONENT AND THE COST AND LABOR  
17 NECESSARY TO REPLACE ANY PARTS DESTROYED BY THE ACT OF DISASSEMBLY OF  
18 THE COMPONENT. IF THE ACT OF DISASSEMBLY MIGHT PREVENT THE RESTORATION  
19 OF THE COMPONENT TO ITS FORMER CONDITION, THE MOTOR VEHICLE REPAIR SHOP  
20 SHALL WRITE THAT INFORMATION ON THE ESTIMATE. THE MOTOR VEHICLE REPAIR  
21 SHOP SHALL NOTIFY THE CUSTOMER ORALLY AND IN THE ESTIMATE THE MAXIMUM  
22 TIME IT WILL TAKE TO REASSEMBLE THE MOTOR VEHICLE OR THE VEHICLE COMPO-  
23 NENT IN THE EVENT THE CUSTOMER ELECTS NOT TO PROCEED WITH THE WORK AND  
24 SHALL REASSEMBLE THE MOTOR VEHICLE WITHIN THAT TIME PERIOD IF THE  
25 CUSTOMER ELECTS NOT TO PROCEED WITH THE WORK. UPON REQUEST OF THE  
26 CUSTOMER, AFTER THE ACT OF DISASSEMBLY HAS BEEN PERFORMED, THE MOTOR  
27 VEHICLE REPAIR SHOP SHALL PREPARE A WRITTEN ESTIMATE FOR THE PARTS AND  
28 LABOR NECESSARY FOR THE SPECIFIC JOB. THE MOTOR VEHICLE REPAIR SHOP  
29 SHALL INCLUDE WITH THE ESTIMATE A STATEMENT OF ANY WORK WHICH, IF  
30 REQUIRED TO BE DONE, WILL BE DONE BY SOMEONE OTHER THAN THE MOTOR VEHI-  
31 CLE REPAIR SHOP OR AN EMPLOYEE. NO WORK SHALL BE DONE BY OTHER THAN THE  
32 MOTOR VEHICLE REPAIR SHOP OR AN EMPLOYEE WITHOUT THE WRITTEN OR ORAL  
33 CONSENT OF THE CUSTOMER. IF SUCH CONSENT IS ORAL, THE MOTOR VEHICLE  
34 REPAIR SHOP SHALL MAKE A NOTATION ON THE WORK ORDER AS DESCRIBED ABOVE.  
35 THE MOTOR VEHICLE REPAIR SHOP SHALL BE RESPONSIBLE, IN ANY CASE, FOR ANY  
36 SUCH WORK IN THE SAME MANNER AS IF THE MOTOR VEHICLE REPAIR SHOP OR AN  
37 EMPLOYEE HAS DONE THE WORK.

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

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

54 [4] 5. (a) Every motor vehicle repair shop shall display in a  
55 conspicuous place in such shop a sign stating: PURSUANT TO SECTION 2610  
56 OF THE INSURANCE LAW AN INSURANCE COMPANY MAY NOT REQUIRE THAT REPAIRS

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

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

8 [5] (C) EVERY MOTOR VEHICLE REPAIR SHOP SHALL DISPLAY IN A CONSPICUOUS  
9 PLACE IN SUCH SHOP A SIGN STATING THE RIGHTS OF CUSTOMERS UNDER THE  
10 MOTOR VEHICLE REPAIR SHOP REGISTRATION ACT. SUCH INFORMATION SHALL  
11 INCLUDE BUT SHALL NOT BE LIMITED TO: THE RIGHT TO A WRITTEN ESTIMATE FOR  
12 REPAIR WORK OR SERVICES, UPON REQUEST BY THE CUSTOMER, THAT ONLY WORK  
13 AUTHORIZED BY THE CUSTOMER CAN BE PERFORMED, THE RIGHT TO A DETAILED  
14 INVOICE STATING THE WORK PERFORMED AND THE PARTS SUPPLIED INCLUDING A  
15 DETAILED DESCRIPTION OF THE WARRANTY OR GUARANTEE WHERE APPLICABLE, THAT  
16 THE ACT PROHIBITS CHARGES GREATER THAN THE ESTIMATE WITHOUT THE CUSTOM-  
17 ER'S CONSENT AND THE RIGHT TO INSPECT ALL REPLACED PARTS AND COMPONENTS,  
18 EXCEPT WARRANTY, GUARANTEE OR EXCHANGE PARTS, UPON TIMELY WRITTEN  
19 DEMAND. SUCH A SIGN SHALL BE MAINTAINED IN A MANNER AND FORM PRESCRIBED  
20 BY THE COMMISSIONER. NOTWITHSTANDING, SUCH SIGN MAY BE INCORPORATED INTO  
21 ANOTHER SIGN PROVIDED THAT THE LETTERS ARE AT LEAST TWO INCHES HIGH AND  
22 HAVE A STROKE OF AT LEAST ONE-HALF INCH.

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

37 [5-a] 7. All the provisions of section three hundred ninety-eight-f  
38 of article twelve-A of this chapter shall apply to the provisions of  
39 subdivision [five] SIX of this section with the same force and effect as  
40 if the language of those provisions had been incorporated in full into  
41 subdivision [five] SIX of this section and had expressly referred to the  
42 term collision estimator licensee, except that the term "certificate of  
43 registration" shall be read as "estimator's license" and the term  
44 "registrant" as "licensee".

45 [6] 8. (a) In addition to the requirements of subdivision one of this  
46 section, if an inflatable restraint system is replaced, the motor vehi-  
47 cle repair shop shall state on the repair invoice the name and tax iden-  
48 tification number from whom such replacement inflatable restraint system  
49 was purchased. The vehicle repair shop shall, in the case of any  
50 salvaged inflatable restraint system installed, also state on the repair  
51 invoice the vehicle dismantler's registration number, the vehicle iden-  
52 tification number of the vehicle from which the inflatable restraint  
53 system was salvaged and the part number of the salvaged inflatable  
54 restraint system. The insurer and the consumer shall receive a copy of  
55 the purchase invoice for such replacement inflatable restraint systems.

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

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

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

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

29 [7] 9. Each motor vehicle repair shop which either removes or installs  
30 inflatable restraint systems shall maintain a log book containing the  
31 following information: (a) the date of installation, (b) the vehicle  
32 identification number, license plate number, and make and model of the  
33 repaired vehicle, (c) the replacement inflatable restraint system's part  
34 number, (d) in the case of a salvaged inflatable restraint system, (1)  
35 the vehicle identification number of the vehicle from which the replace-  
36 ment inflatable restraint system was salvaged, and (2) the name, tax  
37 identification number, and registration number of the automobile  
38 dismantler from whom such salvaged inflatable restraint system was  
39 purchased, (e) in the case of a new replacement inflatable restraint  
40 system, the name and tax identification number of the supplier. Such  
41 records shall be maintained in a manner and form prescribed by the  
42 commissioner. Upon request of an agent of the commissioner or of any  
43 police officer and during its regular and usual business hours, the  
44 motor vehicle repair shop shall produce such records and permit said  
45 agent or police officer to examine them.

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