

A Bill for an Act Relating to Automotive Repair Dealers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose and findings. The purpose of this Act is to protect the interests of the public by establishing a system of registering and certifying motor vehicle repair dealers and the mechanics employed by repair dealers. Increased horsepower, weight, and numerous improvements engendered by sophisticated engineering developments have added to the use and enjoyment of the automobile by the motoring public. Accelerated improvements in the automobile have been accomplished by a discernable demand for greater attention to improve maintenance and repair methods to assure optimum performance without sacrificing the requirements of safety. The tendency of motorists to maintain and operate their vehicles for longer periods of time amplifies the importance of adequate service and repairs. The legislature finds that persons who lack the proper training and experience are incapable of providing quality automotive repair services to the motoring public. The legislature believes this Act will serve the interests of the motoring public as well as the interests of the motor vehicle repair industry.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
REGULATION OF MOTOR VEHICLE REPAIRS**

Sec. -1 Definitions. As used in this chapter:

- (1) “Board” means the motor vehicle repair industry board.
- (2) “Department” means the department of regulatory agencies.
- (3) “Motor vehicle” means any passenger car, truck, truck tractor, motorcycle, or motor scooter, as defined in section 286-2.
- (4) “Motor vehicle repair dealer” means any person who is, or has in his employ, a motor vehicle mechanic registered under this chapter and who, for compensation, engages in the business of diagnosing or repairing malfunctions of motor vehicles.
- (5) “Motor vehicle mechanic” means any person, whether self-employed or employed by another, who, for compensation, engages in the diagnosis or repair of malfunctions of motor vehicles, and may be classified as “intermediate” or “journeyman” as the terms are commonly used in the motor vehicle repair industry.
- (6) “Motor vehicle mechanic apprentice” means any person who, for compensation, engages in the diagnosis or repair of malfunctions of motor vehicles under the supervision of a motor vehicle mechanic.
- (7) “Registered mechanic” is a motor vehicle mechanic who has registered in accordance with this chapter.
- (8) “Registered-certified mechanic” is a motor vehicle mechanic who

has been registered and certified in accordance with this chapter.

- (9) "Repair of motor vehicles" means all maintenance of and repairs to motor vehicles, but excluding repairing tires, changing tires, lubricating vehicles, installing light bulbs, batteries, windshield wiper blades, and other minor accessories, cleaning, adjusting, and replacing spark plugs, replacing fan belts, oil, and air filters, and other minor services, which the board by rule determines may be performed by persons without the skills and knowledge required of motor vehicle mechanics and apprentices. No service shall be designated as minor, for purposes of this section, if the board finds that performance of the service requires mechanical expertise, has given rise to a high incidence of fraud or deceptive practices, or involves a part of the vehicle essential to its safe operation.

Sec. -2 Applicability of chapter. This chapter does not apply to:

- (1) Employees of the county, state, or federal governments; or
- (2) Employees of a commercial or business enterprise who engage in the repair of motor vehicles which are owned, maintained and operated exclusively by such commercial or business enterprise and which are not leased or rented to others;

provided that such employees may voluntarily register pursuant to the provisions of this chapter.

Sec. -3 Motor vehicle repair industry board. There shall be within the department of regulatory agencies for administrative purposes a motor vehicle repair industry board of seven members appointed by the governor in the manner prescribed in section 26-34. Three members of the board shall be persons connected with the motor vehicle repair industry and at least two of such members shall be motor vehicle mechanics registered under this chapter except that those motor vehicle mechanics first appointed to the board need not be registered but shall be persons who would qualify for registration under this chapter. The remaining four members shall not be connected with the motor vehicle repair industry. The board shall elect one of its members chairman. No member of the board shall receive any compensation for his services, but each shall be reimbursed for necessary expenses incurred in the performance of his duties.

Sec. -4 Powers and duties of the board. In addition to other powers and duties established by this chapter, the board shall, in accordance with this chapter and chapter 91:

- (1) Establish such qualifications for the registration of motor vehicle repair dealers and motor vehicle mechanics as may be necessary for the welfare of the public and the motor vehicle repair industry, provided that no person shall be registered as a motor vehicle mechanic without first receiving certification as provided by this chapter.
- (2) Inquire into the practices and policies of the motor vehicle repair industry and make such rules with respect to such practices and policies as may be deemed important and necessary by the board for the welfare of the public and the motor vehicle repair industry.
- (3) Contract and cooperate with the state director of vocational educa-

tion in developing and administering the certification program provided for in this chapter.

- (4) Make, amend, and repeal such rules not inconsistent with this chapter, as the board deems appropriate for effectuating the purpose of this chapter and to insure the welfare of the public.
- (5) Enforce this chapter and rules adopted pursuant thereto.

Sec. -5 Executive secretary; other personnel. (a) Subject to chapters 76 and 77 the director of the department of regulatory agencies may employ and remove such administrative, clerical, investigative, and auditing personnel as the board may require and as may be necessary to carry out this chapter. The department may prescribe the powers and duties of such personnel.

- (b) (1) The department shall employ an executive secretary of the board whose position shall be subject to chapters 76 and 77. The executive secretary shall be employed with due regard to his fitness, thorough administrative ability and knowledge of and experience in the repair of motor vehicles.
- (2) The executive secretary shall, under the supervision of the board, administer this chapter and the rules and orders established thereunder and perform such other duties as the board or this chapter may require; he shall attend but not vote at all meetings of the board; he shall be in charge of the offices of the board and responsible to the board for the preparation of reports and the collection and dissemination of data and other public information relating to the motor vehicle repair industry.
- (3) The board may, by written order filed in its office, delegate to the executive secretary such of its powers or duties as it deems reasonable and proper for the effective administration of this chapter, except the power to make rules. The delegated powers and duties shall be exercised by the executive secretary in the name of the board.

Sec. -6 Collection of evidence, complaints, spot checks. The board shall on its own initiative or in response to complaints, investigate on a continuous basis and gather evidence of violations of this chapter and of any rule adopted pursuant to this chapter, by any motor vehicle repair dealer, mechanic, or apprentice, whether registered or not.

Sec. -7 Registration required. On or after January 1, 1976, it shall be unlawful for any person to engage in the repair of motor vehicles for compensation without registering as a motor vehicle repair dealer or motor vehicle mechanic in accordance with this chapter.

Sec. -8 Powers to classify and limit registration. (a) The board shall adopt rules necessary to effect the classification of motor vehicle mechanics in a manner consistent with the certification program established by this chapter, and shall limit the motor vehicle repair activities of a registrant to those areas for which the registrant is certified or registered.

(b) An applicant may make application for registration in more than one classification if he is certified for each classification and otherwise meets the qualification for registration as prescribed by the board. If the applicant

is registered for more than one classification, he shall pay the registration fee but shall not be required to pay any additional registration fee.

Sec. -9 Fees; biennial renewals. (a) The fees for each original biennial registration and renewal thereof shall be as follows:

Motor vehicle repair dealer	\$50
Motor vehicle mechanic	\$20

(b) Any motor vehicle repair dealer maintaining more than one motor vehicle repair facility shall separately register each repair facility and pay a fee for each facility.

(c) The renewal fee shall be paid to the board on or before June 30 of each odd-numbered year. Failure, neglect, or refusal of any registrant to pay the biennial renewal fee before such date shall constitute a forfeiture of his registration. Any such registration may be restored upon written application therefor within one year from such date and the payment of the required fee plus an amount equal to fifty per cent thereof.

Sec. -10 Certified repair dealer. A dealer is a registered and certified motor vehicle repair dealer if not less than fifty per cent of the mechanics employed by him on a full time basis are registered-certified mechanics.

Sec. -11 Prohibited practices. The following acts or omissions related to the repair of motor vehicles shall be grounds for invoking the enforcement procedures of section 11:

- (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading;
- (2) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair;
- (3) Failing or refusing to give to a customer a copy of any document requiring his signature, as soon as the customer signs such document;
- (4) Any other conduct which constitutes fraud;
- (5) Conduct constituting gross negligence;
- (6) Failure to comply with this chapter or regulations adopted pursuant to it;
- (7) Any wilful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect without consent of the customer;
- (8) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle;
- (9) Having repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair dealer, mechanic, or apprentice demonstrates that the customer could not reasonably have been notified;
- (10) Conducting the business of motor vehicle repair in a place other than stated on the registration except that mobile repair facilities

may be permitted if the registration so indicates.

Sec. -12 Enforcement. (a) In accordance with the provisions of chapter 91, the board may fine, suspend, revoke, or refuse to renew the registration of a motor vehicle repair dealer or mechanic for any violation of this chapter or rules adopted pursuant thereto. The board may also order restitution as provided in subsection (c).

- (b) Any fine that is imposed shall be based on the following schedule:

First offense.....	\$75
Second offense	\$150
Subsequent offenses	\$300 to \$1,000

(c) In lieu of or in addition to the fine imposed under this section, the board may require the motor vehicle repair dealer or mechanic to make restitution to the customer. Restitution may be imposed in lieu of a fine even though the amount may exceed the fine schedule set forth in subsection (b).

(d) If a motor vehicle repair dealer operates more than one motor vehicle repair facility in this State, the board pursuant to subsection (a) may only revoke, suspend, or refuse to renew the registration of the specific motor vehicle repair facility which has violated this chapter. Such violation, or such action by the board, shall not affect in any manner the right of such motor vehicle repair dealer to operate his other motor vehicle repair facilities; provided that the board may suspend, revoke, or refuse to renew the registration for all motor vehicle repair facilities operated in this State by a motor vehicle repair dealer upon a finding that such motor vehicle repair dealer has, or is, engaged in a course of repeated and wilful violations of this chapter, or rules adopted pursuant thereto.

(e) The expiration of a valid registration shall not deprive the board of jurisdiction to proceed with any investigation or disciplinary proceeding against a motor vehicle repair dealer or mechanic or to render a decision suspending, revoking, or refusing to renew a registration.

Sec. -13 Invoices; supplying used parts; customer's copy. All work done by a motor vehicle repair dealer, mechanic, or apprentice, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including the general excise tax, and shall state separately the tax, if any, applicable to parts and service work. 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, the invoice shall clearly state that fact. One copy shall be given to the customer and one copy shall be retained by the motor vehicle repair dealer.

Sec. -14 Return of replaced parts; exceptions. Upon request of the customer at the time the work order is taken, the motor vehicle repair dealer, mechanic, or apprentice shall return replaced parts to the customer at the time of the completion of the work excepting such parts as may be exempt because of size, weight, or other similar factors from this requirement by rule of the board and excepting such parts as the motor vehicle repair dealer,

mechanic, or apprentice is required to return to the manufacturer or distributor under a warranty arrangement. If the parts must be returned to the manufacturer or distributor, the dealer, mechanic, or apprentice at the time the work order is taken shall offer to show, and upon acceptance of the offer, shall show the parts to the customer upon completion of the work, except that the dealer shall not be required to show a replaced part when no charge is being made for the replacement part.

Sec. -15 Estimate for labor and parts. The motor vehicle repair dealer, mechanic, or apprentice shall give the customer a written estimated price for labor and parts necessary for a specific job prior to commencement of the job. No charge in excess of fifteen per cent of the estimated price, if the estimated price is less than \$100, or ten per cent of the estimated price, if the estimated price is in excess of \$100, shall be charged for parts and labor supplied in excess of the estimated price, without the prior written or oral consent of the customer. Such consent shall be obtained at some time after it is determined that the estimated price is insufficient and before the labor not estimated is performed or the parts not estimated are supplied. This provision may be waived in writing by the customer, provided that such waiver by its terms shall be effective only after the dealer or mechanic has made reasonable efforts to contact the customer. The form and content of the waiver shall be as prescribed by rule of the board. Nothing in this section shall be construed as requiring a motor vehicle repair dealer, mechanic, or apprentice to give a written estimated price if the dealer, mechanic, or apprentice does not agree to perform the requested service. A reasonable fee may be charged for making the estimate.

Sec. -16 Records required; inspection. Each motor vehicle repair dealer shall maintain such records as are required by rules adopted by the board. The records shall be open for reasonable inspection by the board or other law enforcement officials. All such records shall be maintained for at least two years.

Sec. -17 Sign required concerning board; notice to customer. The board shall design and approve of a sign which shall be placed in all motor vehicle repair dealer locations in a place and manner conspicuous to the public. Such sign shall give notice that inquiries concerning service may be made to the board and shall contain the telephone number of the board. The sign shall also give notice that the customer is entitled to a return of replaced parts upon his request therefor at the time the work order is taken.

Sec. -18 Procedures for accepting complaint. The board shall establish procedures for accepting complaints from the public against any registrant in accordance with the provisions of section 92-13.

Sec. -19 Jurisdiction of circuit court; procedure. The circuit court of the judicial circuit in which any person carries on, or attempts to carry on, business as a motor vehicle repair dealer or acts or holds himself out as a motor vehicle mechanic or motor vehicle mechanic apprentice in violation of this chapter, or any rule made pursuant to this chapter, shall on application of the board, issue an injunction or other appropriate order restraining such conduct.

The proceedings under this section shall be governed by the Hawaii Rules of Civil Procedure, except that no undertaking shall be required, and the board shall not be required to allege facts necessary to show or tending to show lack of an adequate remedy at law or irreparable injury.

Sec. -20 Registration condition precedent to lien. No person required to register under this chapter shall have the benefit of any lien for labor or materials or the right to sue on a contract for motor vehicle repairs done by him unless he was registered at the time he performed the contract.

Sec. -21 Civil action. Nothing in this chapter shall prohibit the bringing of a civil action against a motor vehicle repair dealer, mechanic, or apprentice by an individual.

Sec. -22 Failure to comply with chapter; misdemeanor. Any person who fails to comply with the provisions of this chapter is guilty of a misdemeanor.

Sec. -23 Certification program. (a) The board shall contract with the office of the state director of vocational education to develop and administer a certification program for motor vehicle mechanics.

(b) The certification program shall provide for issuing a certificate to mechanics generally skilled in the repair of motor vehicles and to mechanics who specialize in certain areas of motor vehicle repair. A person may be certified as being generally skilled in the repair of motor vehicles, specially skilled in one or more areas of motor vehicle repair, or both generally and specially skilled. Each area shall be separately tested and certified. The program shall provide for apprenticeship leading to certification as a mechanic. Nothing in this section or chapter shall prevent a student in a course leading to certification from repairing motor vehicles so long as the student is supervised by a mechanic.

(c) The certification test shall include both a written test and a performance test; provided that the written test shall be given orally upon the request of the person being tested. Each application for certification shall be accompanied by a non-refundable testing fee of \$10.

(d) The certification program shall be implemented prior to January 1, 1977. There shall be no limit on the number of times a person may apply for certification; provided that any person failing the examination must wait thirty days before retaking the test.

(e) All persons who take and pass the certification test shall be awarded a certificate which shall be posted in a prominent place at their place of business or employment and a patch which may be worn on clothing apparel. The office of the director of vocational education shall design and procure the certificate and patch.

Sec. -24 Certification required for mechanics prior to registration. (a) Except as provided in subsection (b) below, every mechanic applying for registration shall have passed the appropriate certification test provided for in this chapter.

(b) Notwithstanding any provision of this chapter, any person who has been engaged as a motor vehicle mechanic for a period of at least two years prior to January 1, 1976, and who has applied for registration as a motor ve-

hicle mechanic under this chapter on or before June 30, 1976, shall not be required to take the certification test prescribed in this chapter prior to registration.

Sec. -25 Suits by the office of consumer protection. Nothing in this chapter shall prevent the director of the office of consumer protection from filing an action against any motor vehicle repair dealer, mechanic, or apprentice for violation of section 480-2.”

SECTION 3. This Act shall take effect upon its approval.

(Approved May 27, 1975.)