

CHAPTER 170

MOTOR VEHICLES AND TRAFFIC REGULATION

HOUSE BILL 97-1105

BY REPRESENTATIVES Kaufman, Gotlieb, Swenson, and Tate;
also SENATORS Matsunaka, Arnold, Pascoe, and Weddig.

AN ACT

CONCERNING AMENDMENTS TO THE MOTOR VEHICLE REPAIR ACT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 42-9-102 (3), Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended, and the said 42-9-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

42-9-102. Definitions. As used in this article, unless the context otherwise requires:

(1.5) "ESTIMATE" MEANS A WRITTEN OR ORAL ASSESSMENT THAT DESCRIBES STRUCTURAL DAMAGE TO OR MECHANICAL NEEDS OF A MOTOR VEHICLE. THE ESTIMATE SHALL INCLUDE TOTAL ESTIMATED COSTS OF REPAIR, EXCLUDING SALES TAXES AND TOWING CHARGES, TOGETHER WITH A STATEMENT AS TO WHETHER ANY PARTS TO BE INSTALLED ARE NEW ORIGINAL EQUIPMENT MANUFACTURER, NEW NONORIGINAL EQUIPMENT MANUFACTURER, USED, RECONDITIONED, OR REBUILT.

(1.7) "INVOICE" MEANS THE FINAL STATEMENT FOR SERVICES RENDERED.

(3) "Motor vehicle repair ~~garage~~ FACILITY" means any natural person, partnership, corporation, trust, association, or group of persons associated in fact although not a legal entity which, with intent to make a profit or a gain of money or other thing of value, engages in the business or occupation of performing repairs on a motor vehicle, including repairs on body parts. THE TERM "MOTOR VEHICLE REPAIR FACILITY" INCLUDES A MOTOR VEHICLE REPAIR GARAGE.

(6) "WORK ORDER" MEANS A DOCUMENT THAT A CUSTOMER SIGNS TO AUTHORIZE REPAIRS. "WORK ORDER" MAY INCLUDE AN ESTIMATE.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. 42-9-104, Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended to read:

42-9-104. When consent and estimate required - original transaction - disassembly. (1) (a) No repairs on a motor vehicle shall be performed by a motor vehicle repair ~~garage~~ FACILITY unless the ~~garage~~ FACILITY obtains the written consent of the customer.

(b) The required written consent is waived by the customer only when the motor vehicle has been towed to the motor vehicle repair ~~garage~~ FACILITY or the customer has left the motor vehicle with the motor vehicle repair ~~garage~~ FACILITY outside of normal business hours or when the customer has signed a waiver in compliance with paragraph (b) of subsection (2) of this section. The waiver established by this paragraph (b) for any vehicle that is towed to a motor vehicle repair ~~garage~~ FACILITY or left with the motor vehicle repair ~~garage~~ FACILITY outside of normal business hours is limited to a maximum of one hundred dollars ~~in~~ FOR ALL labor and parts.

(c) When the customer has not given the motor vehicle repair ~~garage~~ FACILITY written consent to perform repairs, no repairs shall be performed unless the ~~garage~~ FACILITY first communicates orally to the customer the written estimate of the total cost of such repairs and the customer then consents to the required repairs. A record of such communication and consent shall be made on the ~~invoice~~ WORK ORDER by the motor vehicle repair ~~garage~~ FACILITY and shall include the date, time, manner of consent, telephone number called, if any, and the names of the persons giving and receiving such consent. IF MORE THAN ONE SUCH COMMUNICATION OCCURS BETWEEN THE MOTOR VEHICLE REPAIR FACILITY AND THE CUSTOMER, A RECORD OF THE TELEPHONE NUMBER NEED NOT BE MADE FOR EACH SUBSEQUENT COMMUNICATION IF THE TELEPHONE NUMBER IS THE SAME AS ON THE INITIAL CONSENT.

(2) (a) (I) Except as provided in paragraph (b) of this subsection (2), no repairs shall be performed by a motor vehicle repair ~~garage~~ FACILITY unless said ~~garage~~ FACILITY first submits in writing or, where allowed by this section, orally communicates to the customer an estimate of the total cost of any such repairs. ~~not including any applicable sales tax.~~ The written estimate shall include the expected completion date of such repairs. A COPY OF THE COMPLETED WRITTEN ESTIMATE OF THE TOTAL COST OF REPAIR SHALL BE PROVIDED TO THE CUSTOMER.

(II) (A) Except as provided in sub-subparagraph (B) of this subparagraph (II), storage charges ~~of not more than ten dollars per day~~ may accrue, beginning on the fourth day, if the customer has not picked up the motor vehicle within three days, exclusive of Saturday, Sunday, ~~and~~ any legal holiday, AND ANY DAYS THE REPAIR FACILITY IS CLOSED FOR BUSINESS, after notification of the completion of authorized repairs or if the customer failed to authorize repairs to be performed within three days, exclusive of Saturday, Sunday, ~~and~~ any legal holiday, AND ANY DAYS THE REPAIR FACILITY IS CLOSED FOR BUSINESS, after the date of communication of an estimate.

(B) Storage charges shall be assessed in accordance with section 38-20-109, C.R.S., if the ~~garage~~ FACILITY chooses to sell the customer's property in accordance with article 20 of title 38, C.R.S.

(C) The amounts that a customer may be charged for storage charges shall be conspicuously printed on the SEPARATE written ~~estimate~~ AUTHORIZATION provided to the customer.

(III) The ~~estimate~~ WORK ORDER provided to the customer shall state conspicuously that, except for body shop repair parts and except for exchanged or warranty parts ~~which~~ THAT shall only be presented to the customer for examination and not returned, the customer is entitled to the return of the replaced parts if the customer so requests at the time of consenting to or authorizing the repairs.

(IV) ~~The estimate shall be recorded on or attached to the invoice required by section 42-9-108~~ THE WORK ORDER, OR A LEGIBLE COPY THEREOF, SHALL BE RETAINED BY THE MOTOR VEHICLE REPAIR FACILITY FOR AT LEAST THREE YEARS.

(b) A customer may waive the right to receive any estimate, either written or oral, prior to authorizing repairs by signing the customer's name and the date below the following statement ~~which~~ THAT shall be in bold type: **"I DO NOT WISH TO RECEIVE ANY ESTIMATE, EITHER WRITTEN OR ORAL, TO WHICH I AM ENTITLED BY LAW, BEFORE REPAIRS ARE AUTHORIZED."** The signing of such waiver does not constitute an authorization of repairs, which shall be a separate statement.

(c) (I) In the event that it is necessary to disassemble, or partially disassemble, a motor vehicle or a motor vehicle part in order to provide the customer with an estimate for required repairs, the written estimate required in paragraph (a) of this subsection (2) shall show the cost of reassembly in the event that the customer elects not to proceed with the repairs of the motor vehicle or motor vehicle part. The estimate shall also include the total cost of labor and parts to replace those expendable items ~~which~~ THAT are normally destroyed by such disassembly. No act of disassembly ~~which~~ THAT would prevent the restoration of the same unit to its former condition may be undertaken unless the motor vehicle repair ~~garage~~ FACILITY has fully informed the customer of that fact in writing on the ~~invoice~~ WORK ORDER and the customer consents to the disassembly.

(II) Any estimate of required repairs given after a disassembly shall comply with the requirements of paragraph (a) of this subsection (2); except that such written estimate may then be communicated orally to the customer. A record of such communication shall be made on the ~~invoice~~ WORK ORDER by the motor vehicle repair ~~garage~~ FACILITY, including the date, time, manner of communication, telephone number called, if any, and names of persons giving and receiving such consent. IF MORE THAN ONE SUCH COMMUNICATION OCCURS BETWEEN THE MOTOR VEHICLE REPAIR FACILITY AND THE CUSTOMER, A RECORD OF THE TELEPHONE NUMBER NEED NOT BE MADE FOR EACH SUBSEQUENT COMMUNICATION IF THE TELEPHONE NUMBER IS THE SAME AS ON THE INITIAL CONSENT.

(d) Towing charges are excluded from the written or oral estimate and consent requirements of this section.

SECTION 3. 42-9-105, Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended to read:

42-9-105. When consent and estimate required - additional repairs - changed completion date. (1) Except when an estimate has been waived pursuant to section 42-9-104 (2) (b), no charge shall be made for labor and parts in excess of the estimate, plus ten percent thereof or twenty-five dollars, whichever is less, without the consent of the customer to the additional charge before performance of the labor or installation of the parts not included in the estimate. ~~but subcontract cost amounts for parts beyond the control of the garage to correctly estimate may be charged for in addition to the estimate.~~ Consent by the customer to additional charges may be written or oral. In either case, a record of such consent shall be made on the ~~invoice~~ WORK ORDER by the motor vehicle repair ~~garage~~ FACILITY and shall include the date, time, manner of consent, telephone number called, if any, and names of the persons giving and receiving the consent. IF MORE THAN ONE SUCH COMMUNICATION OCCURS BETWEEN THE MOTOR VEHICLE REPAIR FACILITY AND THE CUSTOMER, A RECORD OF THE TELEPHONE NUMBER NEED NOT BE MADE FOR EACH SUBSEQUENT COMMUNICATION IF THE TELEPHONE NUMBER IS THE SAME AS ON THE INITIAL CONSENT.

(2) (a) The customer shall be notified in writing on the ~~invoice~~ WORK ORDER of any changes in the expected completion date of the repairs and of the new expected completion date. Such notification may be communicated to the customer orally, but such communication, written or oral, shall be made no more than twenty-four hours after the original completion date, exclusive of Saturday, Sunday, and any legal holiday. If communicated orally, a record of such communication shall be made on the ~~invoice~~ WORK ORDER by the motor vehicle repair ~~garage~~ FACILITY and shall include the date, time, telephone number called, if any, and names of the persons giving and receiving such communication. IF THE NAME OF THE PERSON RECEIVING SUCH COMMUNICATION IS DIFFERENT THAN THE ORIGINAL CUSTOMER, THE NAME AND TELEPHONE NUMBER CALLED, IF ANY, SHALL BE RECORDED ON THE WORK ORDER.

(b) No additional changes in the completion date shall be made unless the consent of the customer to the additional change is obtained. If the required consent is given orally, the motor vehicle repair ~~garage~~ FACILITY shall make a record of such consent on the ~~invoice~~ WORK ORDER and shall include the date, time, manner of consent, ~~telephone number called, if any,~~ and the names of the persons giving and receiving such consent.

(c) If the motor vehicle repair ~~garage~~ FACILITY fails to notify the customer of the change in the completion date or if the customer refuses to consent to an additional change in the completion date, the contract may be cancelled at the option of either the customer or the motor vehicle repair ~~garage~~ FACILITY. Once the contract has been cancelled in this manner, the motor vehicle repair ~~garage~~ FACILITY shall be required to reassemble the motor vehicle in substantially the same condition in which it was delivered to the motor vehicle repair ~~garage~~ FACILITY without cost to the customer unless the customer has been previously notified as to the impracticality of such reassembly; except that the customer shall be required to pay for any repairs already completed as specified in section 42-9-106 (3) (a).

SECTION 4. 42-9-106 (1), (2), (3) (a), (3) (b), and (4), Colorado Revised Statutes, 1993 Repl. Vol., as amended, are amended to read:

42-9-106. Amounts over estimate - storage charges - cancellation of

authorized repairs. (1) Except when an estimate has been waived pursuant to section 42-9-104 (2) (b), if the charge for labor and parts is over the original estimate or any subsequent estimate by ten percent thereof or twenty-five dollars, whichever is less, and unless further oral or written consent is given by the customer pursuant to section 42-9-105 (1), the motor vehicle repair ~~garage~~ FACILITY shall return the motor vehicle to the customer upon the payment of the amount of the original estimate or any subsequent estimate plus ten percent thereof or twenty-five dollars, whichever is less, and the motor vehicle repair ~~garage~~ FACILITY shall not be entitled to a lien for said excess pursuant to section 38-20-106, C.R.S.

(2) No charge shall be made for storage of the motor vehicle unless the motor vehicle is not picked up by the customer within three days, exclusive of Saturday, Sunday, ~~and~~ legal holidays, AND ANY DAYS THE REPAIR FACILITY IS CLOSED FOR BUSINESS, after the customer is notified that the repairs have been completed and the customer was notified, as required by section 42-9-104 (2) (a), that such storage charges would accrue. STORAGE CHARGES MAY ACCRUE PURSUANT TO A WRITTEN AGREEMENT, SEPARATE FROM ANY OTHER REPAIR DOCUMENT, BETWEEN THE MOTOR VEHICLE REPAIR FACILITY AND THE CUSTOMER. The written ~~estimate~~ AUTHORIZATION, in bold type, shall state the following:

STORAGE FEE POLICY

A storage fee ~~of not more than ten dollars per day~~, MAY NOT BE CHARGED UNLESS A WRITTEN AGREEMENT, SEPARATE FROM ANY OTHER REPAIR DOCUMENT, FOR AN AMOUNT IS REACHED. A STORAGE FEE MAY BE CHARGED, beginning on the fourth day, ~~may be charged~~ if a motor vehicle is not removed within three days after the customer is notified that repairs have been completed, excluding Saturdays, Sundays, ~~and legal holidays~~. LEGAL HOLIDAYS, AND ANY DAYS THE REPAIR FACILITY IS CLOSED FOR BUSINESS.

The motor vehicle repair ~~garage~~ FACILITY shall make a record of the notice of completion on the ~~invoice~~ WORK ORDER. The record shall include the date and time of the notice of completion, the manner of communication of the notice, the telephone number called, if any, and the name of the person receiving the notice.

(3) (a) If the customer cancels previously authorized repairs prior to their completion, the motor vehicle repair ~~garage~~ FACILITY shall be entitled to charge the customer for repairs, including labor and parts, which have already been performed so long as said charge does not exceed the original estimate or any subsequent estimate for the repairs already performed.

(b) In requesting the return of the motor vehicle subsequent to the cancellation of previously authorized repairs, the customer shall specify whether it should be reassembled in substantially the same condition in which it was delivered to the motor vehicle repair ~~garage~~ FACILITY or in such a lesser condition of assembly as the customer shall designate. Reassembly shall be completed by the motor vehicle repair ~~garage~~ FACILITY within three days of the customer's request, excluding Saturday, Sunday, ~~and~~ any legal holiday, AND ANY DAYS THE REPAIR FACILITY IS CLOSED FOR BUSINESS.

(4) Nothing in this section shall require a motor vehicle repair ~~garage~~ FACILITY to

give an estimate if such ~~garage~~ FACILITY does not agree to perform the requested repairs.

SECTION 5. 42-9-107, Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended to read:

42-9-107. Used, reconditioned, or rebuilt parts. The motor vehicle repair ~~garage~~ FACILITY shall specify in the original estimate whether any parts to be installed are new ORIGINAL EQUIPMENT MANUFACTURER, NEW NONORIGINAL EQUIPMENT MANUFACTURER, used, reconditioned, or rebuilt, and then shall obtain the consent of the customer before any NEW ORIGINAL EQUIPMENT MANUFACTURER, NEW NONORIGINAL EQUIPMENT MANUFACTURER, used, reconditioned, or rebuilt parts are installed in the motor vehicle. If such consent is oral, the motor vehicle repair ~~garage~~ FACILITY shall make a record of such consent on the ~~invoice~~ WORK ORDER and shall include the date, time, AND manner of consent. ~~telephone number called, if any, and names of persons giving and receiving such consent.~~ THE TELEPHONE NUMBER CALLED, IF ANY, AND THE NAME OF THE PERSON GIVING AND RECEIVING THE CONSENT, IF DIFFERENT THAN THE ORIGINAL CUSTOMER, SHALL BE RECORDED ON THE WORK ORDER. The motor vehicle repair ~~garage~~ FACILITY shall adjust the original estimate for new parts to reflect the altered cost if used, reconditioned, or rebuilt parts are authorized and installed.

SECTION 6. 42-9-108 (1), (2) (g), and (2) (h), Colorado Revised Statutes, 1993 Repl. Vol., as amended, are amended, and the said 42-9-108 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

42-9-108. Invoice. (1) All repairs done by a motor vehicle repair ~~garage~~ FACILITY shall be recorded on a customer's invoice. A legible copy of the customer's invoice shall be given to the customer when the motor vehicle is returned to the customer. The original or a legible copy of the customer's invoice shall be retained for at least three years by the motor vehicle repair ~~garage~~ FACILITY.

(2) The customer's invoice shall include the following:

(g) An identification of any repairs subcontracted to another repair ~~garage~~; and FACILITY;

(h) The legible initials of the person filling out any portion of the invoice not specified in this subsection (2); AND

(i) A COPY OF ANY WARRANTY ISSUED BY THE MOTOR VEHICLE REPAIR FACILITY SETTING FORTH THE TERMS AND CONDITIONS OF SUCH WARRANTY.

SECTION 7. 42-9-108.5, Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended to read:

42-9-108.5. Warranty completion date. When a motor vehicle is returned under a warranty issued by the repair ~~garage~~ FACILITY, the ~~garage~~ FACILITY shall give the customer a written notice that specifies that the work is under warranty and that provides the customer with a completion date for the repair, as required by section 42-9-104.

SECTION 8. Article 9 of title 42, Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

42-9-108.7. Motor vehicle repair facility warranties. IF A MOTOR VEHICLE REPAIR FACILITY ISSUES A MOTOR VEHICLE REPAIR FACILITY WARRANTY, SUCH WARRANTY SHALL APPEAR WITH THE INVOICE AND SHALL SET FORTH ALL TERMS AND CONDITIONS OF SUCH WARRANTY. THE FACILITY WARRANTY SHALL BE LIMITED TO THE TERMS AND CONDITIONS SET FORTH IN SUCH WARRANTY.

SECTION 9. 42-9-109, Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended to read:

42-9-109. Return of replaced parts. Except for body shop repair parts and parts that the motor vehicle repair ~~garage~~ FACILITY is required to return to the manufacturer or distributor under a MANUFACTURER warranty or exchange arrangement, the motor vehicle repair ~~garage~~ FACILITY shall return replaced parts to the customer at the time of the completion of the repairs if the customer so requests at the time of consenting to or authorizing the repairs.

SECTION 10. The introductory portion to 42-9-111 (1) and 42-9-111 (1) (h), Colorado Revised Statutes, 1993 Repl. Vol., as amended, are amended, and the said 42-9-111 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

42-9-111. Prohibited acts. (1) No motor vehicle repair ~~garage~~ FACILITY or any employee or contract laborer of such ~~garage~~ FACILITY shall: ~~knowingly:~~

(h) Require a customer to sign a work order that does not state the repairs that are requested by the customer; or ~~does not state the motor vehicle odometer reading.~~

(i) FAIL TO STATE THE MOTOR VEHICLE ODOMETER READING, UNLESS SUCH READING IS UNFEASIBLE DUE TO THE CONDITION OF THE ODOMETER.

SECTION 11. 42-9-112, Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended to read:

42-9-112. Criminal penalties. (1) Except as provided in subsection (2) of this section, any motor vehicle repair ~~garage~~ FACILITY or any employee of such ~~garage~~ ~~not providing~~ FACILITY THAT FAILS TO PROVIDE a COMPLETED written or oral estimate as required under section 42-9-104 (2), or an invoice as required under section 42-9-108, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than two thousand dollars per violation. No portion of the minimum fine FOR REPEAT OFFENDERS shall be suspended.

(2) Any motor vehicle repair ~~garage~~ FACILITY or any employee of such ~~garage~~ FACILITY who violates section 42-9-111 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars per violation. No portion of the minimum fine FOR REPEAT OFFENDERS shall be suspended.

(2.5) Any motor vehicle repair ~~garage~~ FACILITY or any employee of such ~~garage~~ FACILITY who violates any provision of this article other than the provisions for which penalties are provided in subsections (1) and (2) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of five hundred dollars per violation.

(2.7) ~~Upon a third conviction of A violation of section 42-9-111, the motor vehicle repair garage may be subject to the provisions~~ THIS ARTICLE SHALL ALSO CONSTITUTE A DECEPTIVE TRADE PRACTICE IN VIOLATION of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S., ~~including, but not limited to, temporary restraining orders and other injunctive relief~~ AND SHALL SUBJECT THE MOTOR VEHICLE REPAIR FACILITY OR ANY EMPLOYEE OF SUCH FACILITY TO THE REMEDIES OR PENALTIES CONTAINED IN ARTICLE 1 OF TITLE 6.

(3) ~~In any civil action for the enforcement of this article, the court may award reasonable attorney fees and costs to the prevailing party, and a customer shall be entitled to treble damages for failure of any motor vehicle repair garage or any employee of such garage to comply with this article, except for clerical errors or omissions; but in no event shall such damages be less than three hundred dollars. The customer shall first make written demand for the customer's damages from the motor vehicle repair garage by certified mail at least ten days prior to the filing of any such action, exclusive of Saturday, Sunday, and any legal holiday. Such action shall be brought within the time period prescribed in section 13-80-103, C.R.S.~~

SECTION 12. Article 9 of title 42, Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

42-9-113. Civil penalties. IN ANY CIVIL ACTION FOR THE ENFORCEMENT OF THIS ARTICLE, THE COURT MAY AWARD REASONABLE ATTORNEY FEES AND COSTS TO THE PREVAILING PARTY, AND A CUSTOMER SHALL BE ENTITLED TO TREBLE DAMAGES FOR FAILURE OF ANY MOTOR VEHICLE REPAIR FACILITY OR ANY EMPLOYEE OF SUCH FACILITY TO COMPLY WITH THIS ARTICLE, EXCEPT FOR CLERICAL ERRORS OR OMISSIONS; BUT IN NO EVENT SHALL SUCH DAMAGES BE LESS THAN TWO HUNDRED FIFTY DOLLARS. THE CUSTOMER SHALL FIRST MAKE WRITTEN DEMAND FOR THE CUSTOMER'S DAMAGES FROM THE MOTOR VEHICLE REPAIR FACILITY BY CERTIFIED MAIL AT LEAST TEN DAYS PRIOR TO THE FILING OF ANY SUCH ACTION, EXCLUSIVE OF SATURDAY, SUNDAY, AND ANY LEGAL HOLIDAY. SUCH ACTION SHALL BE BROUGHT WITHIN THE TIME PERIOD PRESCRIBED IN SECTION 13-80-103, C.R.S.

SECTION 13. 6-1-105 (1), Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

6-1-105. Deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(pp) VIOLATES ARTICLE 9 OF TITLE 42, C.R.S.

SECTION 14. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 21, 1997