

Date of Hearing: June 28, 2016

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

SB 778(Allen) – As Amended June 23, 2016

SENATE VOTE: 22-12

***NOTE:** This bill is double-referred, having been previously heard by the Assembly Committee on Privacy and Consumer Protection on June 14, 2016 and approved on a 8-0 vote.*

SUBJECT: Automotive repair: oil changes: notification to customers

SUMMARY: Requires an automotive repair dealer (ARD) who performs oil change services to use the manufacturer's published oil drain schedule, except as specified, when recommending an oil change to a customer; establishes a new registration type under the Bureau of Automotive Repair (BAR) for automotive maintenance providers (AMPs); subjects AMPs to the oil changing requirements and other select ARD requirements, as specified; and makes other conforming changes.

EXISTING LAW:

- 1) Establishes the BAR under the supervision and control of the Director of the DCA to enforce and administer the Automotive Repair Act (Act). (Business and Professions Code (BPC) §§ 9880-9889.68)
- 2) Defines an "automotive repair dealer" as a person who engages in the business of repairing or diagnosing malfunctions of motor vehicles for compensation. (BPC § 9880.1(a))
- 3) Defines the "repair of motor vehicles" to mean all maintenance of, and repairs to, motor vehicles, except the following services: (BPC § 9880.1)
 - a) Repairing tires;
 - b) Changing tires;
 - c) Lubricating vehicles;
 - d) Installing light bulbs, batteries, windshield wiper blades and other minor accessories;
 - e) Cleaning, adjusting and replacing spark plugs;
 - f) Replacing fan belts, oil and air filters; and,
 - g) Other minor services that the director determines to be customarily performed by a gasoline service station.
- 4) Provides that the Director shall not designate a service as minor if the director 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. (BPC § 9880.1(e))

- 5) Defines “automotive technician” as a dealer, or a person employed by a dealer, who performs maintenance, diagnostics, repair, removal or installation of specified integral automotive components, excluding the services excluded from the definition of “repair of motor vehicles.” (BPC § 9880.1(g))
- 6) Makes it unlawful for any person to engage in the work of an ARD unless the person has a current, valid registration in accordance with the Act. (BPC § 9884.6)
- 7) Requires ARDs to do all of the following:
 - a) Register with BAR annually, which includes paying a \$200 annual registration fee per ARD facility location in the state; (BPC §§ 9884-9884.6, 9886.3)
 - b) Post a sign at each location containing a notice that customers have the right to request and receive any car parts that were replaced as part of the service and the phone number and website address of BAR; (BPC § 9884.17)
 - c) Provide an estimate of parts and labor before performing services; (BPC § 9884.9)
 - d) Provide an invoice after performing services; and, (BPC § 9884.8)
 - e) Maintain its transaction records for three years. (BPC § 9884.11)
- 8) Requires “auto body repair shops,” as defined, to register with the BAR using the ARD registration form, and indicate that the shop is registering as an “auto body repair shop” not an ARD. (BPC §§ 9889.51-9889.52)
- 9) Exempts wholesale parts suppliers from BAR registration, but requires wholesale parts suppliers to provide customers with a “written description of the services to be performed” and a notice to each customer stating that the business is not regulated by BAR and including BAR’s toll-free consumer phone number. (BPC 9880.2(d))
- 10) Makes a violation of the ARD provisions of the Act, which include among other things prohibitions on making untrue or misleading statements; committing fraud or gross negligence; and willful disregard for accepted trade standards for good and workmanlike repair; a misdemeanor punishable by a fine of up to \$1,000 or six months imprisonment, or both. (BPC §§ 9884.7, 9889.20)
- 11) Authorizes the BAR to promulgate regulations and to enforce violations of the Act against registered and unregistered ARDs by: investigating on its own initiative or in response to a consumer complaint; gathering evidence of violations; suggesting measures to compensate for damages suffered; issuing citations and notices of abatement; pursuing administrative disciplinary proceedings against registered ARDs and suspected unregistered ARDs; pursuing disciplinary proceedings against registered ARDs, including registration denial, suspension, revocation, or probation proceedings using the administrative hearing process; pursuing injunctive relief against registered and unregistered ARDs in superior court; and filing criminal charges with the district attorney or city attorney against a registered or unregistered ARD. (BPC §§ 9882.(a), 9882.5, 9884.7, 9882.12-9882.15, 9884.19, 9884.22)

THIS BILL:

- 1) Makes several findings and declarations regarding waste of automotive oil and oil change intervals, including that to reduce waste, it is the intent of the Legislature to ensure that an ARD or AMP follows a vehicle manufacturer's published maintenance schedule unless the manufacture specifies conditions that require shorter oil change intervals.
- 2) Amends the title of the Automotive Repair Act to the Automotive Repair and Maintenance Act.
- 3) Defines "Automotive Maintenance Provider" as a person who, for compensation, engages in the business of the preventative automotive maintenance services associated with fluid and filter changes, fluid treatments, and belt and windshield wiper blade replacement.
- 4) Defines "recommended" or "recommendation" to mean any written recommendation, including, but not limited to, a recommendation of an oil drain interval in the form of a window sticker or a key tag, or through programmable settings in the vehicle's oil life indicator.
- 5) Provides that "recommended" or "recommendation" does not mean resetting a preset or nonprogrammable oil life indicator or an oil life monitor based on a mathematical algorithm of the vehicle's usage.
- 6) Requires an ARD or an AMP who performs oil change services and recommends a date or mileage for an oil drain interval to follow the vehicle manufacturer published maintenance schedule, except as specified.
- 7) Provides that, if an ARD or an AMP recommends a date or mileage for an oil drain interval that deviates from the vehicle manufacturer's published maintenance schedule for reasons, including, but not limited to, compliance with a consumer's preference, the basis for the date or mileage recommendation shall be noted on the final invoice or on a document attached to the final invoice.
- 8) Specifies that none of the oil change requirements under this bill shall be construed as prohibiting the customer from selecting any date or mileage for an oil drain interval of his or her choice and having that choice reflected on future recommendations from an ARD or an AMP.
- 9) Specifies that, when an ARD or an AMP performs an oil change service, the dealer shall include the following oil change disclosure statement on the final invoice or on a document attached to the final invoice:

"It is important to change your oil at the proper intervals. Your vehicle manufacturer publishes oil change intervals in your owner's manual and on the manufacturer's Web site."
- 10) Subjects AMPs to the same registration requirements as ARD's and makes conforming changes. Excludes language and provisions specific to the repair of motor vehicles, including:
 - a) Repair specific terms, such as "install" or "retrofit";

- b) The requirement for compliance with Penal Code § 551 relating to referrals and agreements with insurance companies;
- c) Requirements relating to repair-specific estimates and repair-specific activities; and
- d) The prohibition against liens without a valid registration.

11) Makes other conforming changes.

FISCAL EFFECT: According to the Senate Committee on Appropriations May 11, 2016 analysis, pursuant to Senate Rule 28.8, this bill will result in negligible state costs.

COMMENTS:

Purpose. This bill is sponsored by Californians Against Waste. According to the author, “For decades, drivers have been told that taking proper care of their vehicle means getting the oil changed every three months or 3,000 miles. While this may have been true 30 years ago, advances in motor oil and engine technology have allowed drivers to extend oil change intervals greatly. Most vehicles built since 2000 call for an oil change at intervals of 7,500 or greater. Further, many new vehicles require the use high quality motor oil that can last 10,000 or even 25,000 miles between changes. However, most busy car owners rarely read their owner's manuals; and therefore, have no idea how often they should change their oil. They simply follow the windshield reminder sticker, which stubbornly insists on following the outdated 3,000 miles change interval. In fact, a 2012 survey by CalRecycle indicated almost 10 million Californians change their motor oil every 3,000 miles or less. This means Californians are unnecessarily wasting money and needlessly wasting oil simply because they are cautiously following the recommendations of their repair dealer. [This bill] will finally put an end to this wasteful practice by requiring any shop performing oil changes to follow the manufacturer’s maintenance schedule when recommending how soon to return for the next oil change.”

Background. According to an article published by *Edmunds*, a web-based automotive information provider, a Jiffy Lube customer who buys high quality oil but follows the window sticker recommendation of “three months or 3,000 miles” would waste \$369 and 15.2 quarts of useable oil every year (“Stop Changing Your Oil! Breaking the 3,000 Mile Habit”, *Edmunds*, April 23, 2013). Over five years of the car's life and 60,000 miles of driving, this would amount to \$1,847 and 125 quarts of wasted oil.

Further, while California has a motor oil collection and recycling program, only about half of used oil is recycled. In February 2016, the California Department of Resources Recycling and Recovery (CalRecycle) released a report entitled *Used Oil Life Cycle Assessment Report to the Legislature* which examined the agency’s oil recycling program and suggested improvements to decrease the amount of oil negatively impacting the environment. One of the policy recommendations in the report states, “Service stations that change customer oil would be required to indicate the next recommended oil change service based on the manufacturer’s recommended drain interval for their particular vehicle (windshield reminder stickers) rather than the typical 3,000 miles.” According to CalRecycle, “Changing motor oil according to the manufacturer specifications would reduce motor-oil demand in California by about 10 million gallons a year.”

This bill would adopt CalRecycle’s policy recommendation by requiring all car repair and oil change shops to make oil change recommendations based on the manufacturer’s published

maintenance schedule. Specifically, this bill requires car repair and maintenance shops to make recommendations for oil changes based on the specific vehicle manufacturer's published oil change interval for a given car, rather than using a one-size-fits-all sticker or notice that recommends "three months or 3,000 miles." If the shop makes a recommendation that deviates from the manufacturer's published schedule, then this bill requires the shop to write basis for that deviation on the customer's invoice, or on a document attached to the invoice.

Enforcement by BAR. Currently, the BAR regulates the automotive repair industry and enforces the Act. The primary purposes of the Act are to protect consumers from unethical and illegal behavior by the automotive repair industry and improve consumer confidence in the California auto repair industry.

The Act mandates a statewide automotive repair consumer protection program, including the requirement that ARDs be registered and regulated by BAR. The Act also gives the BAR the authority to license and regulate official stations and mechanics in the areas of lamp, brake, and smog device inspection and repair.

The Act protects consumers by requiring all ARD's, including lamp, brake, and smog stations to: (1) post a sign with information for consumers; (2) provide written estimates that detail the parts and labor to be provided; (3) obtain authorization from their customers prior to commencing any repair services; and (4) provide customers with itemized invoices that detail the parts provided and the labor performed. The Act further requires the BAR to mediate complaints, investigate violations, and take action against ARDs and licensed technicians that fail to comply with the Act or regulations adopted under the Act.

However, existing law exempts those performing minor services, which at the time of the enactment of the Act were services typically performed at gas stations, such as oil changes, replacing light bulbs, and changing air filters. The rationale for excluding these services was that they were simple services that carried a lower risk of serious consumer harm.

As a result, individuals who only perform oil changes are not currently regulated by the BAR. While the BAR can send cease and desist letters to individuals suspected of performing automotive repairs without an ARD registration, without a registration to tie an administrative disciplinary proceeding to, the BAR is limited to referring cases to the Office of the Attorney General or the district attorney.

To allow the BAR to enforce the oil changing requirements under this bill, this bill creates a new category of registrants called AMPs. According to the author, the purpose of generating a new type of registration is to avoid overburdening those who do not perform repairs (maintenance only). Specifically, creating a new category creates a clear delineation of the scope of the work an ARD or AMP may perform and the requirements. The delineation may relieve unforeseen issues with liability, insurance, and other regulatory compliance and risk management concerns.

Current Related Legislation. AB 873 (Jones) of the current Legislative Session, deletes the current list of minor repairs exempted from registration with the BAR, effective January 1, 2018, and requires the Director of the DCA, prior to January 1, 2018, to adopt regulations defining a new list; excludes propulsive batteries from the current list of minor services; and excludes motor clubs and operators of tow trucks from the definition of roadside services. *STATUS: This bill is currently pending in the Senate Business, Professions and Economic Development Committee.*

AB 1174 (Bonilla) of the current Legislative Session, would require the BAR to adopt regulations on its complaint, investigation, and mediation process and would require the BAR to track and retain data on every mediation attempted and completed for each ARD. The bill also would require the BAR to study the feasibility, effectiveness, and impact of requiring all service workers who are employed by ARDs to be licensed or certified by the BAR and report to the Legislature by July 1, 2018. *STATUS: This bill is currently pending in the Senate Committee on Business, Professions and Economic Development.*

Prior Related Legislation. AB 1665 (Jones) of 2014, would have deleted “repairing tires” and “changing tires” from the list of repair services exempt from registration as an automotive repair dealer under the BAR. It would have also required an ARD to be capable of diagnosing and servicing vehicles, as specified. *NOTE: This bill was vetoed by Governor Brown, writing “The legislature conducted an oversight hearing that highlighted the need for the [BAR] to update its regulations to better reflect changes in automotive technology that have occurred in recent decades. As a result, the legislature passed [the] bill to require businesses that change or repair tires for compensation to register as automotive repair dealers. Before a new licensing scheme is enacted, a more comprehensive review is needed. I am directing the [BAR] to work with interested parties to determine which, if any, automotive repair services merit further regulation.”*

SB 202 (Galgiani) of 2013, would have deleted repairing and changing tires from the list of repair services exempt from registration as an automotive repair dealer under the BAR. However, it would have excluded tire services provided by or on behalf of a motor club holding a specified certificate of authority or an operator of a tow truck owned or operated by a person or entity possessing a valid motor carrier permit from the definitions of “repair of motor vehicles” and “automotive technician.” *NOTE: This bill was held in the Assembly Committee on Appropriations.*

AB 2065 (Galgiani) of 2012, was similar to SB 202 (Galgiani) of 2013. *NOTE: This bill was held in the Assembly Committee on Appropriations.*

SB 546 (Lowenthal), Chapter 353, Statutes of 2009, made broad changes to the California Oil Recycling Enhancement Act to encourage the best re-use of used oil and reduce air pollution from the use of used oil, including: raising the fee paid by lubricating oil manufacturers from \$0.16 to \$0.26 per gallon; increasing the incentives paid for recycling used oil; increasing the testing requirements for used oil transporters; and requiring a life-cycle analysis of used oil.

ARGUMENTS IN SUPPORT:

Californians Against Waste (sponsor) and others similarly write in support, “Used motor oil, which is insoluble and contains heavy metals and toxic chemicals, if improperly disposed can enter our oceans and fresh waters via the storm water systems, endangering humans, fish and wildlife. In addition, one gallon of used motor oil can foul the taste of 1 million gallons of water. This hazardous waste is also often burned as fuel, creating dangerous air pollution. While California has a motor oil collection and recycling program, source reduction makes the best environmental and economic sense.

It is particularly important that the bill apply equally to currently unlicensed facilities that perform oil changes, and require them to properly register with the [BAR], become licensed, and

comply with all applicable laws. Given the stakes involved, ensuring compliance with environmental and consumer protections is important enough to warrant uniform enforcement of the law.”

ARGUMENTS IN OPPOSITION:

None on file.

IMPLEMENTATION ISSUES:

This bill establishes a new registration scheme under the BAR. Because the BAR will be responsible for implementing the new registration program, the author should continue to work with the BAR to ensure there are no fiscal, administrative, or technological barriers to implementation.

Further, the author should continue to work with stakeholders to ensure that the proper conforming changes have been made. Specifically, because the language of the new AMP registration is based largely off of the existing ARD provisions, there may be more duplicative requirements to fix.

REGISTERED SUPPORT:

Californians Against Waste (sponsor)
Automotive Oil Change Association
Biosynthetic Technologies
Californians Against Waste
California Product Stewardship Council
CALPIRG and CALPIRG Education Fund
Clean Water Action
Consumer Federation of California
Natural Resources Defense Council
Sierra Club California
Tri-CED Community Recycling
WILDCOAST

REGISTERED OPPOSITION:

None on file.

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