



CELEBRATING
100 YEARS

SERVICE DEPARTMENT COMPLIANCE MANUAL



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By ComplyAuto EduTech, LLC

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<https://www.complyauto.com/edutech>

IMPORTANT NOTICE

This material has been produced by ComplyAuto EduTech, LLC for the use of the California New Car Dealers Association and its Members and is meant to summarize the basic legal requirements that apply to documenting automotive repair transactions in the State of California.

Readers may obtain the state statutes mentioned in the Manual online at: <https://leginfo.legislature.ca.gov/faces/codes.xhtml>. Readers may obtain the California regulations mentioned in the Manual online at: <https://govt.westlaw.com/calregs/>. The California Bureau of Automotive Repair also publishes a convenient guide entitled "Bureau of Automotive Repair Laws and Regulations Reference Book," available in printed form from the Bureau of Automotive Repair or electronically on the Bureau of Automotive Repair Website at <http://www.bar.ca.gov>. Keep in mind that BAR's publication was last updated in 2019, and several laws have changed since that time. Additionally, a more comprehensive manual can be made available to you through ComplyAuto EduTech at <https://www.complyauto.com/edutech>.

THIS IS NOT LEGAL ADVICE. This Manual is not intended as, nor should it be interpreted as, legal advice or a substitute for legal advice. This is meant to be a desk reference to aid in understanding general compliance obligations for documenting automotive repair work. This Manual is intended as a source of guidance to automotive repair dealers to assist in recognizing and handling issues that commonly arise in the automotive repair industry.

The Service Department Compliance Manual has been updated through July 2024.

The following material should not, under any circumstances, be considered a substitute for consultation with an attorney, nor as a legal opinion or as any official view or position of the authors or the Association. Neither the authors nor the Association make any express or implied warranty in regard to the use of this Manual. Each repair facility and its attorney(s) must depend upon their own knowledge of the law and expertise in the use of this Manual.

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About ComplyAuto EduTech

ComplyAuto EduTech ("EduTech") is a software company specializing in automotive repair compliance for both automotive repair facilities and dealerships. EduTech and its instructors are certified by the California Bureau of Automotive Repair (BAR) to provide remedial training to automotive repair dealers across the state. The instructors are California licensed lawyers who have over 45 years of combined automotive compliance experience and are members of the BAR Advisory Group, which was established to increase the level of communication between BAR, the automotive repair and Smog Check industries, and interested stakeholders. It is an informal, voluntary membership group that meets regularly to provide input to the BAR chief on the programs and services that BAR oversees.

EduTech's parent company, ComplyAuto, offers a full suite of solutions for dealerships to achieve compliance with state and federal privacy and cybersecurity laws – such as the Gramm-Leach-Bliley Act's revised Safeguards Rule – and personal data laws, and environmental, health and safety services to meet state and federal OSHA requirements.

Visit www.complyauto.com for more details.

About CNCDA

The California New Car Dealers Association ("CNCDA") is the largest state association of franchised new car and truck dealers, representing nearly 1,300 franchised new car and truck dealers throughout California. CNCDA's members are primarily engaged in the retail sale and lease of new vehicles, and engage in automotive service, repair and part sales.

CNCDA focuses on protecting and promoting the interests of franchised new car dealers before all state government and regulatory agencies, as well as developing compliance resources for California dealers. Many of CNCDA's compliance resources (including this manual and many others) are available on CNCDA's website under the "CNCDA Comply" tab. To learn more about CNCDA and to become a member, visit CNCDA's website at www.cncda.org.

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Chapter 1: Introduction

The purpose of this manual is to provide information to California Automotive Repair Dealers ("Dealer") relating to compliance with the Automotive Repair Act ("Act"). The Act encompasses the laws and regulations pertaining to automotive repair and is overseen by the Bureau of Automotive Repair ("BAR").

If these laws and regulations are not followed, the repair facility runs the risk of ruining its reputation, potential civil action, and, in the worst-case scenario, getting the facility shut down by BAR. In other words, BAR compliance training should be a core part of the organization's risk management system and the question should not be "How do I make more money," but, rather, "How do I keep the doors open by understanding these comprehensive requirements?"



The Act creates an environment where a Dealer cannot perform any diagnostic, service, or repair work to a customer's vehicle without first describing the intended work to be performed and obtaining the customer's expressed permission to do so. This provides more transparency to the customer of the entire repair process from beginning to end.

If this isn't challenging enough, very specific laws apply to certain descriptions, authorizations, and repair services, and failure to follow any of these critical steps can result in the Dealer not being compensated for the work performed and subject to severe disciplinary action by BAR. In a simple analogy, think of the Dealer as an author and the entire documentation process as a "story" the author is trying to write in a book. Every step in the process – such as the estimate, repair order, and invoice – represents a chapter in this book and everything the Dealer documents - such as the authorization, parts, and labor – represents a page in each chapter. If documentation is missing (e.g. failing to obtain authorization) then the pages within these chapters are missing and the entire story is lost. These gaps in the book give the BAR the ability to narrate their own story about what truly happened. This would then give way to potential administrative action or worse, a civil action by an upset customer.

BAR estimates that it assists consumers recover approximately \$5 million annually in the form of cash refunds and service repair rework from Dealers across the state. This manual will assist the Dealer in identifying and filling in the missing pages so that the story is told properly every time.

This manual does this by educating the reader on laws and regulations that apply to the automotive repair industry, providing practical hypotheticals of situations that may arise in the service department, and identifying the best practices a Dealer should incorporate to significantly reduce their liability. It is specifically designed for California managers, service advisors, technicians, and any employee who works with customers to help prepare their estimates, invoices, and obtain authorizations.

The reader will be more informed as to whether their current business practices and procedures are compliant, gain a better sense of the risks posed to the Dealer with regard to BAR's disciplinary actions, and learn necessary measures to achieve and maintain effective compliance.

Chapter 2: Initial Estimates

Importance of an Initial Estimate

The initial estimate is one of the most important documents of the vehicle repair transaction. It is usually the first document provided to the customer by the Dealer, hence the term “initial”. The initial estimate is generally required for every repair or service and lays the groundwork for the entire repair process. Not only will it provide the customer and the Dealer full transparency for the repair service, it also sets expectations for both parties as to what the repair service will entail: no more and no less.



Failure to provide the customer with an estimate renders the repair contract unenforceable by law. A landmark 1975 court case called *Bennett v. Hayes* (125 Cal.App3d 701) held that a Dealer's failure to give a written estimate prior to repair of the customer's automobile, as required by the Act, bars recovery for work performed. This case provides a good framework of what will be discussed in further detail in later chapters of this manual.

The initial estimate must describe parts and labor and the total estimated price of the specific repair service. Each part listed in the initial estimate must be new unless specifically identified as a used, rebuilt, or reconditioned part¹. The Dealer must list each part supplied in such a manner that the customer can understand what was purchased and the price for each described part². As a best practice, it is recommended that parts and labor are described in such a way that a sixth grader can understand. Also, the Dealer should not describe parts as an acronym on its own, such as “R&R” for “remove and replace”, but to use an acronym key or legend if necessary. It is acceptable to identify parts by brand name or other comparable designation³.

Unless a very specific exemption exists⁴, the lack of an initial estimate in a repair service is a violation of the Act that will result in disciplinary action by the BAR. This disciplinary action

¹ Bus. & Prof. Code § 9884.9; 16 CCR § 3353

² 16 CCR § 3356

³ Vehicle Code § 12001

⁴ Bus. & Prof. Code § 9884.9(e)

includes, but is not limited to, revocation of the Dealer's registration (which allows them to operate their facility in California) and publishing the Dealer's name on a publicly facing website along with the applicable violation(s). Once the customer authorizes the initial estimate, the initial estimate becomes a "work order" and operates as a binding contract between the customer and the Dealer.

The initial estimate, as well as all other records associated with the individual transaction, must also include a unique identifier linking all the records to that specific transaction. This is usually the Repair Order number but could also be another type of unique identifier⁵.

The initial estimate should contain all terms, conditions, and any disclosures that may be legally required or are intended to be part of the contract between the Dealer and customer. This is considered "boilerplate" language and is an important part of the contract. These terms are commonly referred to as the "backer language" because these terms and conditions are usually described on the reverse or "back" of the initial estimate. The backer language usually includes any warranty information and exclusions, storage disclosures and other legal requirements, and is covered more extensively in a future chapter called *The "Backer"*.

The initial estimate sets the expectations of the customer and Dealer and documents the customer's authorization to perform the identified repairs. Should a customer make a complaint to the BAR, the lack of an initial estimate will force the BAR to view the service as an unauthorized repair service and take disciplinary action against the Dealer.

Initial Estimate Overview

An initial estimate sets the roadmap for the entire repair service. At its most basic level, every initial estimate must contain the following⁶:

- 1) Identification information of the Dealer;
- 2) Identification of the repair service; and
- 3) Other required documentation of the repair service

The Act requires that the initial estimate not only contains certain information but that it be completed in a very specific manner as well. These three topics will be discussed in detail below.

⁵ 16 CCR § 3358(e)

⁶ Bus. & Prof. Code § 9884.9(a); 16 CCR § 3353(a)

Creating an Initial Estimate

Identifying the Dealer

The Act specifies that only the Dealer (and subsequently its employees) is authorized to perform the repair service. If the Dealer plans on having another facility perform the repairs, the Dealer must disclose and obtain authorization from the customer to sublet the repairs. The following information must be on the initial estimate to properly identify the Dealer:

- Name of the Dealer and contact information (phone number, physical address, etc.);
- Dealer's registration number as recorded with the BAR; and
- If the Dealer charges the customer a hazardous waste fee as part of the service, the Environmental Protection Agency (EPA) identification number.

Identifying the Repair Service

As noted earlier, think of the initial estimate as the roadmap for the entire proposed repair service. In describing the repair service that is to be completed, the initial estimate should contain the following:

- Repair Order number to identify the repair*;
- The date and time in which the customer's vehicle was taken into the facility*;
- Customer's identifying information and the vehicle's information (VIN, license plate number, manufacturer, model, make, color, etc.)*;
- Odometer reading of the vehicle at the time when it was brought into the facility⁷;
- List of parts and estimated price⁸; and
- Labor and estimated price⁹.

**These are best practices to help the Dealer readily identify the repair service and the customer.*

The initial estimate should also include a description of the reason the customer brought in the vehicle (e.g. the issue with the vehicle). This description not only provides transparency for all parties involved but also begins the documentation process. Remember to think of the Dealer as an author and that entire documentation process as a storybook that the Dealer is trying to write.

⁷ Bus. & Prof. Code § 9884.7(a)(2)

⁸ Bus. & Prof. Code § 9884.9

⁹ *Id.*

Odometer Reading

The Act requires that the odometer reading on the vehicle be recorded on the initial estimate when the vehicle is brought in for service². Many do not realize that this serves as a basis for detecting fraud. For example, if a "10,000-mile maintenance service" is completed on a vehicle, investigators will want to know the actual mileage on the vehicle. If the vehicle has fewer than 10,000 miles then the service will pique their interest. Another example is if a repair service requires a road test for safety (such as a brake replacement service). Having identical "in" and "out" odometer readings in this example would show that the Dealer did not do the required road test for safety after the service was completed. If it is not already communicated to your staff, the odometer reading must be one of the first things that is recorded on every initial estimate.

Return of Parts

Each part supplied in the repair service must be new unless it is specifically identified as a used, rebuilt, or reconditioned part¹⁰. Furthermore, the Act requires that, upon request from the customer at the time the initial estimate is created, the Dealer must return the replaced parts to the customer at the completion of the repairs. However, such a request can be declined due the replaced parts' size, weight, or whether or not the Dealer must return it to the manufacturer or distributor under a warranty arrangement¹¹.

Labor Rate

The BAR does not require a Dealer to list hours for labor on the initial estimate or invoice nor is it recommended for operational reasons simply because it can hamstring the repair service. For example, if the Dealer describes four hours of labor on an estimate for a repair procedure, then the Dealer must have spent *exactly four hours* on the repair service. Otherwise, it could be considered fraud. Clearly, the best practice is to eliminate any reference to labor hours on an estimate. There are exceptions to labor rates, however. For example, brake and lamp stations must conspicuously post a list of prices for their services as either a fixed fee or an hourly rate based on time and materials required. Also, smog check stations must conspicuously post a list of prices for their services and an hourly labor rate for repairs¹².

¹⁰ 16 CCR § 3353(a)

¹¹ 16 CCR § 3355

¹² 16 CCR §§ 3307(d), 3340.15(d)

Shop Supplies

The Dealer cannot charge for items generically noted as “shop supplies” or “miscellaneous parts.” The Dealer must be specific and may charge only for supplies actually used on the customer’s vehicle. The cost for these supplies must be included in the initial estimate and they must be itemized on the invoice¹³.

Sublet

The Dealer must include in the initial estimate a statement of any sublet repair to be performed on the customer’s vehicle. The Dealer is responsible for all sublet repairs in the same manner as if it had performed the repairs itself.

Sales Tax

Though not explicitly required, it is recommended that the Dealer document the sales tax associated with the repair service on the estimate as a best practice. It may be a nominal increase for a minor repair service, like an oil change, but the sales tax alone can be substantial if the repairs were for something more expensive like an engine or transmission replacement. This is something the customer would want to know about upfront to avoid any kind of sticker shock.

Below is a sample Initial Estimate provided by the BAR in their publication called “Write it Right: A Guide for Automotive Repair Dealers.”

¹³ Bus. & Prof. Code § 9884.9; 16 CCR § 3356(g)

Any Automotive Repair

BAR Registration No. **ARD123456**
EPA Identification No. **CAL7654321**
10123 Broadway Blvd.
Anytown, CA 90001
Phone: (555) 555-5555
Fax: (555) 555-5556
Email: someone@example.com

ESTIMATE

ID #: 000001
Date: January 3, 2019

Customer Information:

John Doe
1000 Rubicon Road
Anytown, CA 90001
Home/Cell: (555) 555-1234
Work/Other: (555) 555-5678

Vehicle Information:

2000 Jeep Wrangler
Odometer: 103,292
License: 4BY4CAL
Engine: 4.0L

LABOR OPERATION OR PART DESCRIPTION ¹	QTY	PARTS	LABOR	PRICE
Ultimate Oil Change* Includes up to 5 quarts 5W-30 oil and oil filter.				\$59.95
Diagnosis Malfunction indicator light (MIL) is on. No drivability concern noted by customer. Road test, retrieve diagnostic trouble codes (DTCs), diagnose cause, and provide repair recommendation.				\$80.00
*NOTE: If a job involves both repairs and preventative maintenance services, an estimate is required to perform the repairs. Although not required, it is best practice to list the preventative maintenance services on the estimate. B&P § 9884.9, CCR § 3353				
SUBTOTAL LABOR				
SUBTOTAL PARTS				
SUBTOTAL				
SALES TAX				
TOTAL				\$139.95

AUTHORIZATION				
Original Estimate:	\$139.95	Date:	1/3/2019	☒ In Person
		Time:		☐ By Phone
Authorized By:	<i>John Doe</i>	Phone #:		☐ By Text
		Email:		☐ By Email
Additional Cost:		Revised Estimate:		☐ In Person
		Date:		☐ By Phone
Authorized By:		Time:		☐ By Text
		Phone #:		☐ By Email
Description:				

Make all checks payable to *Any Automotive Repair*. Payment is expected upon completion of all work. All repairs are covered by our 12-month/12,000-mile warranty unless otherwise stated on this document. See reverse side for information regarding warranty exclusions, limitations, and requirements.

¹ All parts are new unless specified otherwise.

THANK YOU FOR YOUR BUSINESS!

Source: "Write It Right: A Guide for Automotive Repair Dealers," <https://www.bar.ca.gov/pdf/writeitright.pdf>; last revised in February, 2019.

Other Required Documentation

Hazardous Waste Fee

Any fees for handling, management, and disposal of hazardous waste directly related to a specific job must be itemized separately in the initial estimate and invoice. If the Dealer routinely collects a "hazardous waste fee" for a service that creates hazardous waste, such as fluid exchange repairs (transmission fluid exchange or an oil change) or in an auto body repair service (paint or solvents), the Dealer's initial estimate and invoice must have the facility's Hazardous Waste Identification Number, or more commonly known as the Dealer's EPA Number¹⁴. It allows registered hazardous waste transporters to lawfully transport its waste to a recycling facility.

The hazardous waste fee may not act as a source of profit for the Dealer and cannot be charged arbitrarily without a financial analysis of what the true cost is to the Dealer. The hazardous waste fee should be calculated for the Dealer by a third-party environmental health and safety (EHS) company. Depending on how much hazardous waste the facility generates per year, the EHS company determines a "per repair service" charge that can be passed onto the customer to offset the fees in which the Dealer must pay. This charge, and the EPA Number, must be separately itemized on both the initial estimate and the final invoice.

California Tire Fee

Established by the California Department of Tax and Fee Administration ("CDTFA"), the California Tire Fee is a fee that is charged for the sale of every new tire (including spare tires) and, as of January 1, 2024, is set at one dollar and seventy-five cents (\$1.75)¹⁵. The Dealer is required to collect this fee from the customer on the sale of every new tire and must remit this fee to the California Tire Recycling Management Fund. This fee is especially relevant in repair services where a new tire is sold to the customer. Be sure to separately itemize this fee on the estimate. For more information and to register with CDTFA for quarterly reporting of collected fees, visit the CDTFA website at <https://www.cdtfa.ca.gov>.

Tire Disposal Fee

Entirely optional, a tire disposal fee can be charged on repairs where a tire is replaced and recycled by the Dealer. The tire fee is charged to the customer to offset the cost that the Dealer must assume when it stores and disposes of the used tires. Though there is no criteria in determining this tire fee, the Dealer must do its due diligence in determining the per tire fee and

¹⁴ 16 CCR § 3357

¹⁵ Public Resources Code § 42885

the fee must not be a source of profit for the Dealer. If the Dealer wants to charge the tire fee, it must be documented on the initial estimate. Note that this fee must be separately itemized on the estimate and cannot be charged as hazardous waste.

Lead-Acid Battery Fee

If the Dealer sells new lead-acid batteries while replacing them in the repair service, the Dealer must charge the customer a non-refundable \$2.00 fee for every new lead-acid battery that it sells.¹⁶ Additionally, the Dealer must charge a refundable deposit (commonly referred to as the "core charge") for each battery purchase unless the customer exchanges a used lead-acid battery of the same type and size. The amount of the deposit can be determined by the Dealer, but it is usually dictated by the battery manufacturer. The customer has forty-five (45) days from the date of purchase to exchange a lead-acid battery of the same type and size in order to have their deposit returned.

The fee must be separately itemized as the "California Lead-Acid Battery Fee" while the core charge must be itemized as the "Lead-acid battery refundable deposit."

Not only must the battery fee and deposit be separately itemized on the initial estimate, but it must also have the following disclosure. Note that this disclosure can also be placed on a conspicuous sign in the Dealer's facility:

This dealer is required by law to charge a nonrefundable \$2 California battery fee and a refundable deposit for each lead-acid battery purchased.

A credit of the same amount as the refundable deposit will be issued if a used lead-acid battery is returned at the time of purchase or up to 45 days later along with this dealer's receipt.

The Dealer may keep the deposit, minus the sales tax to be remitted to the state, after 45 days if the customer fails to drop off a used lead-acid battery of the same type and size. With the exception of over-the-counter sales, practically speaking, the refundable deposit rarely applies because the repair service usually requires that the Dealer replace an existing battery rather than installing a new one where an old battery did not exist.

However, there are some important exceptions to charging the battery fee. The law requiring that the Dealer collect and itemize the fee does NOT apply to the following¹⁷:

¹⁶ Health & Safety Code §§ 25215 et seq.

¹⁷ Health & Safety Code § 25215.1(p)(2)

- 1) Used, spent, discarded, refurbished, reconditioned, rebuilt, or reused lead-acid batteries;
- 2) Lead-acid batteries sold to a Dealer for resale by the Dealer (wholesale);
- 3) Lead-acid batteries sold with new vehicles;
- 4) A lead-acid battery replaced by a new motor vehicle dealer in a used vehicle as part of reconditioning the vehicle for resale; and
- 5) The replacement of a lead-acid battery pursuant to a warranty or vehicle service contract, if the service was at no cost to the customer.

If one of the exemptions listed above applies, the buyer must complete an exemption form that the seller must retain in its records for a minimum of four (4) years, in case of an audit by the CDTFA.

The law also requires that the Dealer effectively act as a "drop-off" station for used lead acid batteries. The Dealer must accept, at no cost to the customer, up to six (6) used lead-acid batteries per person, per day, with or without the purchase of a new battery.

Note that a violation of this law is a misdemeanor and can also result in civil penalties up to \$25,000 per violation.

For more information and to register with CDTFA for quarterly reporting of collected fees, visit the CDTFA website at <https://www.cdtfa.ca.gov>.

Checking Tire Pressure

Unless they are auto body facilities, auto glass installers, auto parts distributors, auto parts retailers or auto dismantlers, a Dealer servicing a vehicle is required to check and inflate all operational tires to the pressure recommended by the vehicle manufacturer when servicing, repairing, or performing diagnostics on all vehicles¹⁸. Initial estimates generated by the Dealer must document the pressure check and inflation service. For example, the labor description should be as follows: "Check and Inflate Tires: \$0.00."

The regulation also applies to all dealer-owned vehicles when such vehicles are commercially serviced. This includes rental/loaner fleets, used car inventory (e.g., reconditioning or safety inspections), demonstrators, parts/service vehicles, and all other dealer-owned vehicles.

However, this tire service requirement does not apply in the following circumstances¹⁹:

¹⁸ 17 CCR § 95550

¹⁹ 17 CCR § 95550(d)(3)

- 1) The tires are on a vehicle with a GVWR of more than 10,000 lbs;
- 2) The facility determines that the tires are unsafe; or
 - (a) An unsafe tire is defined as any tire considered unsafe in accordance with standard industry practices due to tire tread wear, age, tread irregularity or damage. Examples include any tire with exposed ply or cord, sidewall crack, bulge, knot, or ply separation.
- 3) The customer refuses or declines the service but only for one of the following reasons:
 - (a) The tires are filled with nitrogen, and the facility does not have a nitrogen inflation system;
 - (b) They affirm that they had their tires inflated within the past 30 days; or
 - (c) They affirm that they will inflate their tires within the next seven days.

If the inflation service is not performed, the Dealer must indicate on the invoice why the service was not completed. A narrow exception to this rule is that if the only service being performed is a free "check and inflate" service at the customer's request a written estimate is not required²⁰. However, if any paid service or warranty work is conducted along with the tire check, this exception will not apply and the Dealer will need to include it on the paperwork.

Finally, the Dealer must use a tire pressure gauge that is capable of measuring the air pressure of a tire with an error threshold of no greater than ± 2 PSI. Over time, gauges become less reliable and should be replaced.

Multi-Point Inspection Checklist

If a Dealer performs a diagnostic service, such as a multi-point inspection, the service must be described on the initial estimate even if it is provided at no additional cost to the customer. The Dealer must specifically identify what points will be inspected on the initial estimate. This can be done in two ways: 1) listing all of the points that will be inspected on the customer vehicle; or 2) attaching the multi-point inspection list as an appendix to the initial estimate. Most Dealers find it much more convenient to attach a blank multi-point inspection checklist referencing the Repair Order number.

Miscellaneous Issues

There are other times where a Dealer must document specific practices on the initial estimate. These situations are sublet repairs, third-party designations, warranty work, and windshield repairs. We will discuss them at length in future chapters.

²⁰ Bus. & Prof. Code § 9884.9(e)(1)

Forms of Customer Authorization on an Estimate

When an initial estimate is authorized by the customer, it becomes a “work order.” As noted earlier, the work order is a binding contract between the Dealer and the customer and the Dealer can only perform the specified services as authorized in the work order. There are generally three types of authorization a customer can provide the Dealer to allow the Dealer to perform the agreed upon repair services²¹:

- 1) written authorization;
- 2) oral (or verbal) authorization; and
- 3) electronic authorization.

These forms of authorization will be discussed in further detail in a future chapter. For our purposes here, we just need to know that the Dealer must receive authorization in any of the above forms before they can proceed on the repair. Otherwise, the BAR will view it as an unauthorized repair and a violation under the Act.

Exceptions to Initial Estimate: Certain Preventative Maintenance Services

There are limited exceptions to providing an initial estimate on a repair service. An initial estimate is not required for a Dealer to perform any of the preventative maintenance services defined below if 1) the customer authorizes the service and 2) either of the following occur²²:

1. The service is performed free of charge; or
2. The total price for parts and labor necessary to perform the service is displayed in a conspicuous manner or is made available to and acknowledged by the customer.

Preventative Maintenance Services

Preventative maintenance services means the following maintenance services²³:

- Checking tire pressure and adding or relieving pressure, as necessary
- Rotating tires
- Changing:
 - Transmission fluid
 - Transmission filter
 - Engine oil and filter
 - Differential fluid
 - Power steering fluid
 - Transfer case fluid
 - Engine air filters

²¹ Bus. & Prof. Code § 9884.9(a); 16 CCR § 3353.1

²² Bus. & Prof. Code § 9884.9(e)

²³ Bus. & Prof. Code § 9880.1(j)

- Cabin air filters
- External fuel filters
- Engine coolant
- Performing a fuel system induction service
- Replacing:
 - Belts
 - Windshield wiper blades
 - Light bulbs
- Restoring headlamps
- Adding oil or fuel treatments through the designated fill points
- Topping off fluids
- Removal, reinstallation, and replacement of any components necessary to perform each service
- Tapping of damaged threads without removal of any fluid pan

What if a Dealer provides both these maintenance services along with a prescribed repair service?

Dealers find themselves wondering whether or not an initial estimate is required if the repair service includes a preventative maintenance service (which would allow the Dealer to *not* generate an initial estimate) as well as a traditional repair service where an initial estimate is required. The BAR recommends, although not required, that it is a best practice to generate an initial estimate and list the preventative maintenance services alongside any repair services.

Common Mistakes in an Initial Estimate

Unlike most other oversights under the Act, Dealers usually make these common mistakes on an initial estimate because they are not aware of the requirement. We have found time and time again that if the Dealer knew of this simple issue then it would no longer be a complaint that the BAR regularly reviews.

Let's identify the common mistakes in the initial estimate process and see what we can do to prevent them from happening.

#1: Multi-Point Inspection Not Documented

The initial estimate should outline the entire repair service and contain all of the proposed services. Additionally, the initial estimate should include any other services provided to the customer at no additional cost. A prime example of this would be a complimentary multi-point inspection.

Dealers must notate "Perform complimentary multi-point inspection" or something similar to make it absolutely clear that the customer has authorized this repair service and 1) list all of the points that were inspected on the customer vehicle or 2) attach the multi-point inspection list as an appendix to the initial estimate. Most Dealers find it much more convenient to attach a blank

multi-point inspection checklist referencing the Repair Order number, but be sure that you perform all services outlined on the checklist.

#2: No EPA Number

The Dealer can charge the customer a hazardous waste fee to offset its costs to dispose of hazardous waste only if the Dealer has its EPA Number identified on the initial estimate. It is recommended that a third party environmental health and safety company calculate the fee and it cannot be a source of profit for the Dealer.

#3: Sublet Work Not Identified

Only the Dealer that creates the initial estimate can perform the proposed repair service(s)²⁴. If the Dealer sublets the work to another Dealer or third party because the Dealer itself is not equipped to do the work – such as to a windshield repair or wheel alignment – then the Dealer must state that fact on the initial estimate for the customer to authorize.

#4: “Complimentary” or “No Charge” Services Not Documented

As noted earlier, to try to increase overall customer satisfaction, most Dealers perform complimentary or free repair services for customers. These complimentary services are usually minor in nature, but no matter the type of service, the Dealer must create an initial estimate for the repair and the customer must provide authorization before the Dealer performs the service.

#5: Diagnosis Description is Vague

Simply listing “diagnose vehicle” on the initial estimate when outlining what the Dealer is performing is another common mistake because the phrase is too general. Does this mean diagnose the entire vehicle or simply check diagnostic codes? Or does it mean a complete tear down of the vehicle? Think of the initial diagnosis as the beginning chapter of a book. When the customer first contacts the Dealer to explain a problem with the vehicle, this is the start of the repair process and should be documented thoroughly by the Dealer. Simply listing “diagnose vehicle” may imply that the Dealer is actually conducting a thorough diagnosis of every single component of the vehicle, which may not have been the case. This is why the Dealer should narrow down the description of diagnoses to refer to why the customer brought the vehicle in and state on the estimate what service will be performed.

For example, a labor description could state, “Customer complains that check engine light is on. Customer states no driveability concerns. Retrieve diagnostic trouble codes, perform road test, check cause, and provide recommendations. Price; \$XX.”

²⁴ Bus. & Prof. Code § 9984.9(b); 16 CCR § 3353(d)

Chapter 3: Revised Estimates and Tear Down Estimates

Importance of a Revised Estimate

If additional repair work is needed on a repair service, the Dealer must prepare a revised estimate and obtain additional customer authorization. It is human nature for memories to fade and in an industry where staff turnover is historically prevalent, accurate documentation practices are paramount. Additionally, this provides protection to the Dealer in case any customer disputes should arise in the future because it gives an exact depiction of the events as they occurred long after the repair services have been completed.

Not only is it required by the Act, but preparing a revised estimate is good business practice and tends to increase customer satisfaction. It keeps the customer informed throughout the repair service and asks for their authorization where necessary.



When a Revised Estimate is Necessary

By now, we understand that except for some very limited circumstances, every repair service needs to have its own initial estimate. The initial estimate starts the repair service and has specific requirements to properly document and begin the repair service. More importantly, the initial estimate documents the customer's authorization to perform the requested repairs.

Whenever an additional repair service is required (or a different repair service is required altogether), the initial estimate must be updated, and the customer must provide additional authorization. Similar to an initial estimate, the revised estimate must contain very specific information about the additional repair service in order to give the customer an accurate depiction of what the updated repair service entails.

Creating a Revised Estimate

Once the initial estimate is properly authorized by the customer it becomes a "work order" and it is a binding contract between the Dealer and the customer. The Dealer can only perform the specified services as authorized in the work order, nothing more and nothing less. If additional

services or changes are necessary, the Dealer must prepare a revised estimate for the additional service. A revised estimate must have the following²⁵:

- Describes the additional labor and parts;
- Provides the cost for the additional labor and parts; and
- Includes the total revised cost. As a best practice, it is recommended that the sales tax be included in the total cost.

The Dealer will then need to receive and document the additional authorization from the customer that allows the Dealer to move forward with the proposed services. The additional authorization could take one of three forms: written, oral, or electronic.

Below is an example of a revised estimate that includes the additional authorization.

²⁵ 16 CCR § 3354(a)

Any Automotive Repair
 BAR Registration No. **ARD123456**
 EPA Identification No. **CAL7654321**
 10123 Broadway Blvd.
 Anytown, CA 90001
 Phone: (555) 555-5555
 Fax: (555) 555-5556
 Email: someone@example.com

WORK ORDER

ID #: 000001
 Date: January 3, 2019

Customer Information:
 John Doe
 1000 Rubicon Road
 Anytown, CA 90001
 Home/Cell: (555) 555-1234
 Work/Other: (555) 555-5678

Vehicle Information:
 2000 Jeep Wrangler
 Odometer: 103,292
 License: 4BY4CAL
 Engine: 4.0L

LABOR OPERATION OR PART DESCRIPTION ¹	QTY	PARTS	LABOR	PRICE
Ultimate Oil Change Includes up to 5 quarts 5W-30 oil and oil filter.				\$59.95
Diagnosis Malfunction indicator light (MIL) is on. No drivability concern noted by customer. Road test, retrieve diagnostic trouble codes (DTCs), diagnose cause, and provide repair recommendation.				\$80.00
Road tested vehicle. Verified MIL is on and no drivability concerns. Retrieved DTC P0151 (Low Oxygen Sensor Voltage), pulled freeze frame data and tested oxygen sensor circuit per factory service manual. Verified circuit voltage is within specification. Found upstream oxygen sensor faulty. Recommend replacing oxygen sensor, clearing DTC and road test to verify repair.				
SUBTOTAL LABOR				
SUBTOTAL PARTS				
SUBTOTAL				
SALES TAX				
TOTAL				\$139.95

AUTHORIZATION						
Original Estimate:	\$139.95			Date:	1/3/2019	☒ In Person
				Time:		☐ By Phone
Authorized By:	<i>John Doe</i>			Phone #:		☐ By Text
				Email:		☐ By Email
Additional Cost:	\$140.00	Revised Estimate:	\$279.95	Date:	1/3/2019	☐ In Person
				Time:	10:36 am	☐ By Phone
Authorized By:	John Doe			Phone #:	(555) 555-1234	☒ By Text
				Email:		☐ By Email
Description:	Replace upstream (front) oxygen sensor and verify repair.					

Make all checks payable to *Any Automotive Repair*. Payment is expected upon completion of all work. All repairs are covered by our 12-month/12,000-mile warranty unless otherwise stated on this document. See reverse side for information regarding warranty exclusions, limitations, and requirements.

¹ All parts are new unless specified otherwise.

THANK YOU FOR YOUR BUSINESS!

Source: "Write It Right: A Guide for Automotive Repair Dealers," <https://www.bar.ca.gov/pdf/writeitright.pdf>; last revised in February, 2019.

Third-Party Designations

If there is a situation where the customer is unavailable to provide additional authorization for the repair service, then authorization may be obtained from the designated third-party individual. However, the third-party designation must have been made in writing at the time the customer provided the initial authorization for the repair service. Remember, this individual cannot be the Dealer, including an employee, agent or person acting on their behalf, nor an insurer involved in a claim involving repairs to the vehicle²⁶. In these situations, authorization for the revised estimate must come from the designated third-party.

Common Situations Requiring a Revised Estimate

Though the concept of a revised estimate may be confusing (i.e., when they are required and when they are not), there are few situations where a revised estimate is absolutely necessary. These situations are so conspicuous that the lack of a revised estimate is a red flag that the repair service itself is incorrect. We will go through some of those situations below.

#1: Further Inspection Required (or “Check and Advise”)

There are instances where a customer brings their vehicle to the Dealer not knowing what needs to be repaired or serviced. For example, a customer may come in complaining that their vehicle is making a strange noise or the vehicle's service light is on. In these instances, the service writer usually documents “check and advise” in the initial estimate, signifying that the initial estimate will be updated with the proposed repair service after a technician has had the opportunity to diagnose the vehicle's issues. Only when the customer is notified of the proposed repair service in a revised estimate, and authorizes it, can the Dealer perform the repair.

If a BAR enforcement representative was to review the repair order and sees the phrase “check and advise” (or something else to that effect) and no revised estimate was in the file, they will believe that the service repair was completed incorrectly and view the entire service as an unauthorized repair.

#2: After a “Tear Down”

A “tear down” occurs when the customer's vehicle, or the vehicle's component, must be partially disassembled for the Dealer to have a better idea of what kinds of repairs are needed.

²⁶ Bus. & Prof. Code § 9884.9(d); 16 CCR § 3354(c)(2)

A “tear down estimate” is the documentation that memorializes this specific event. It is crucial to remember that no actual repairs have yet been authorized. On occasion, the tear down is so substantial that the disassembly may be irreversible and the customer must be notified of this possibility and authorize it as such.

Tear downs will be discussed further below, but for our purposes here, you only need to know that tear down estimates should not be treated like the initial estimate that allows the dealer to perform the recommended repair service! The Dealer still needs to create and deliver a revised estimate, complete with proposed repair services, once they know what repair services are needed. Only when they receive and document the authorization for the repair services that they can perform the repairs.

#3: Multiple Revisions to an Estimate

It is possible that a repair service requires multiple revisions. Many Dealers do not realize that one revised estimate will not be sufficient to meet the requirements of the Act. Rather, multiple revised estimates and additional authorizations will be required. This is very common with auto body repairs where multiple revisions (or supplements for collision repair) are necessary.

Each time additional work that is not identified in estimate (or revised estimate) is necessary, the Dealer must prepare another revised estimate and obtain additional customer authorization to perform the repair.

Tear Down Estimate

There are certain situations that require the vehicle or vehicle components to be deconstructed to properly diagnose the vehicle issue(s). A tear down is most prevalent in repairs that involve the engine, transmission and auto body repairs.

If it is necessary to tear down a vehicle or vehicle component in order to properly diagnose the issue, the Dealer must do all of the following:

1) Estimate of tear down: The Dealer must first give the customer an estimate for the tear down and obtain authorization for the tear down.

The estimate must include the following:

(A) The cost of reassembling the vehicle or component;

- (B) The cost of all parts and labor necessary to replace items that are normally destroyed by the tear down of the vehicle or component such as gaskets, seals, and O-rings;
- (C) If applicable, notification that the act of the tear down might prevent the restoration of the vehicle or component to the condition in which it was provided by the customer; and
- (D) The maximum time it will take the Dealer to reassemble the vehicle or component in the event the customer elects *not* to proceed with the repair or maintenance of the vehicle. The Dealer shall reassemble the vehicle or component within the time period specified in the tear down estimate. The maximum time is counted from the date of authorization of the tear down²⁷.

(2) Itemized estimate for repair after tear down: Upon completion of the tear down, the Dealer shall give the customer an itemized estimate for labor and parts necessary for the required repair (also called the "Second Estimate"). This second estimate follows the same requirements as the "initial estimate" that was discussed in *Chapter 3: Revised Estimates and Tear Down Estimates*. The Dealer shall then obtain the customer's authorization for either repair or reassembly before any further diagnosis or repair is done or charges accrue²⁸.

(3) Decline Work or Reassembly: If, after the tear down, a customer declines repair or reassembly, the Dealer shall, as applicable, document on the tear down invoice that the customer declined the repair or reassembly. For example: "*The customer declined repair and the vehicle was reassembled.*"²⁹"

Storage Charges

The Dealer that has entered into a contract to perform a tear down (i.e. disassembling a vehicle or vehicle component for the purpose of preparing an itemized estimate to perform the needed repairs) cannot assess storage fees until the tear down is complete and the itemized estimate has been provided to the consumer³⁰.

Generally, a Dealer does not charge the customer for towing or storage, but there are instances where a Dealer will charge the customer these fees especially if the vehicle is towed in and left for a substantial amount of time. If a Dealer charges customers for towing, storage or both (except of storage unrelated to the tow, such as after a repair service is completed), the Dealer

²⁷ 16 CCR § 3353(c)(1)

²⁸ 16 CCR § 3353(c)(2)

²⁹ 16 CCR § 3353(c)(3)

³⁰ 16 CCR § 3353(c)

must post a "Towing Fees and Access Notice" in an area in plain view of the public and have copies readily available to the public upon request. Additionally, the invoice must itemize the fees and have the following disclosure. This additional notice must state the following, enclosed within a border, and printed in no less than 10-point type³¹:

Upon request, you are entitled to receive a copy of the Towing Fees and Access Notice.

The content of the Towing and Storage Fees and Access Notice is specified in statute³².

³¹ Vehicle Code § 22651.07(a)(3)

³² Vehicle Code § 22651.07(e)

Chapter 4: Customer Authorization

Who is the Customer?

In any repair service, the first question that a Dealer must understand is “who is the customer?” According to the Act, the customer is the person presenting the vehicle for repair and authorizing the repairs to the motor vehicle³³. The customer cannot be the Dealer, the insurance company involved in a claim that includes the motor vehicle being repaired, or an employee or agent or person acting on behalf of the Dealer or insurer.

Importance of Customer Authorization

Once the initial estimate is prepared, the Dealer must obtain the customer's authorization before any work is commenced. The authorization must be recorded on the initial estimate.

Without proper authorization from the customer, the Dealer cannot perform any services or repairs to a vehicle. Services must be authorized by the customer in written, verbal (oral), or electronic form.



The law is very clear: No diagnoses or repair, including “free” and warranty repairs, shall commence and no charges shall accrue without specific authorization from the customer³⁴. A good general rule to remember is that a Dealer can't touch the vehicle until it gets authorization from the customer.

Customer authorization acts as consent or permission by the customer to allow the Dealer to proceed on the repair work that is proposed in the initial estimate. Once the customer authorizes the initial estimate, the initial estimate becomes a “work order” and operates as a binding contract between the customer and the Dealer that the Dealer must strictly follow. The Dealer must then provide the customer with a copy of the work order because the Dealer must give the customer a copy of everything the customer signs³⁵.

³³ Bus. & Prof. Code § 9880.1(f)

³⁴ Bus. & Prof. Code § 9884.9(a); 16 CCR § 3353.1(a)

³⁵ Bus. & Prof. Code § 9884.7(a)(3)

Without the customer's authorization, one can reasonably assume that the customer never allowed the Dealer to perform the repair service or that they were not aware of the service in the first place. If the customer complains to the BAR about the repair service, the absence of authorization will be viewed as an unauthorized repair service and BAR may take disciplinary action against the Dealer for violating the Act.

Forms of Customer Authorization

As noted earlier, the work order (i.e. an initial estimate that the customer has authorized) is a binding contract between the Dealer and the customer and the Dealer can only perform the specified services as stated in the work order. There are generally three types of authorization a customer can provide on an initial estimate to allow the Dealer to perform the agreed upon repair services³⁶: 1) written authorization; 2) oral (or verbal) authorization; and 3) electronic authorization. Let's discuss them further below.

Written Authorization

A customer can provide authorization for a repair service with a simple signature. As the most prevalent and easiest way to authorize a repair service, written authorization is given by signing the initial estimate either with a pen (i.e. a "wet ink signature") or with a stylus or finger on an electronic device (i.e. an "electronic signature"). The Dealer must also record the date in which the written authorization was provided.³⁷

The easiest and clearest way to document the customer's written authorization is to incorporate a statement that speaks to the customer's intent and include a signature line. This statement can something like the following:

Customer acknowledges the content of this estimate and authorizes the facility to perform the services described therein. Customer has also received a copy of this estimate. _____ (signature)

Oral (or Verbal) Authorization

³⁶ Bus. & Prof. Code § 9984.9(a); 16 CCR § 3353.1

³⁷ 16 CCR § 3353.1(b)

Oral (or verbal) authorization requires a few more steps to be considered a valid form of authorization under the Act. Once the Dealer receives verbal confirmation from the customer that authorizes the repair, the Dealer must also document the following on the initial estimate³⁸:

- 1) Name of the person giving the authorization;
- 2) Telephone number called; and
- 3) Date and time in which the authorization was verbally provided.

The documentation must also be transferred to the final invoice. Note: the most prevalent method for verbal authorization occurs over the telephone.

Electronic Authorization

Electronic authorization can be provided by the customer in either a text message or an email. Each of these methods have specific elements that must be documented on the initial estimate.

Text Message Authorization

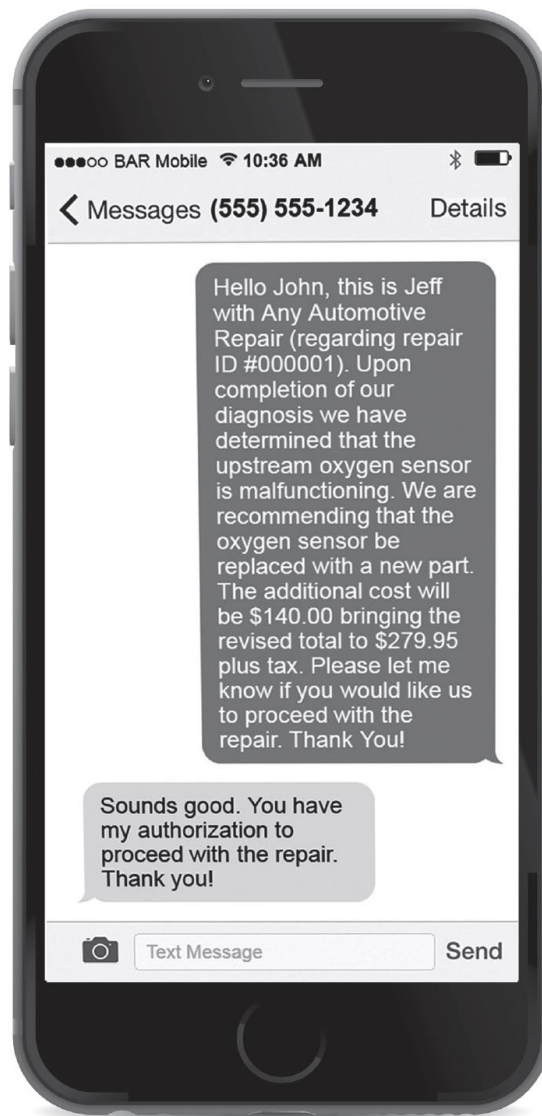
If the electronic authorization is provided through a text message, the Dealer should document the following:

- 1) Name of the person giving the authorization;
- 2) Telephone number texted;
- 3) Date and time in which the authorization was provided; and
- 4) Content of the text message authorizing the repair or maintenance service, if possible.

The best practice to record this information is to print the text message, affix a unique identifier of the repair service (i.e. a Repair Order Number), and attach it to the initial estimate.³⁹ Below is an example of a text message authorization.

³⁸ 16 CCR § 3353.1(c)

³⁹ 16 CCR § 3353.1(d) and (e)



Source: "Write It Right: A Guide for Automotive Repair Dealers," <https://www.bar.ca.gov/pdf/writeitright.pdf>; last revised in February, 2019.

Email Authorization

If the electronic authorization is provided through an email message, the Dealer should document the following:

- 1) Name of the person giving the authorization;
- 2) Email address contacted;
- 3) Date and time in which the authorization was provided; and
- 4) Content of the email message authorizing the repair.

Similar to documenting a text message, the easiest method is to print the email (along with any attachments), affix the unique identifier, and attach the printout to the initial estimate.

Unusual Circumstances Authorization

The law also provides for authorization in “unusual circumstances.” This occurs when a customer, wanting the Dealer to take possession and perform specific repairs, is unable to deliver the vehicle to the Dealer during business hours or if the motor vehicle is towed to the Dealer without the customer present. We will discuss these circumstances in a future chapter.

Third-Party Designation

As noted earlier, the customer is defined as the person who presents the vehicle for repair and is the *only party* who can authorize repairs to that vehicle – not a friend, spouse, sibling, or even legal owner! If there is a situation where the customer is otherwise unavailable to provide authorization (or additional authorization) for the repair service, the customer may designate a third-party individual on the repair service. This individual cannot be the Dealer, including an employee, agent or person acting on the Dealer’s behalf, or an insurer involved in a claim involving repairs to the vehicle⁴⁰.

This third party designation must be made in writing at the time the customer provides the initial authorization for the repair service.⁴¹

The easiest method to capture this designation is to implement a statement on the estimate or provide a separate designation form and affix it to the initial estimate. An example is as follows:

DESIGNATION OF PERSON TO AUTHORIZE ADDITIONAL DIAGNOSIS, REPAIRS, OR PARTS

I hereby designate the individual named below to authorize any additional work not specified or part not included in the original estimate for parts and labor.

Customer Name:	_____
Designee Name:	_____
Designee Phone Number:	_____
Designee Email:	_____
Fax Number:	_____
Work Order Number:	_____
Date:	_____

⁴⁰ Bus. & Prof. Code § 9884.9(d); 16 CCR § 3354(c)(2)

⁴¹ Bus. & Prof. Code § 9884.9(d); 16 CCR § 3354(c)

Customer's Signature:	
-----------------------	--

Once the third-party individual is properly designated, the Dealer can contact this designee or the original customer for any additional authorization required for the repair service.

Common Mistakes in Authorizations

Multiple Signatures on Estimates

Often, initial estimates can have multiple areas where the customer can sign. This usually occurs when the form itself has a pre-designated area for the customer's signature and the Dealer's software system prints an additional area for the customer's signature. Problems can arise if only one area is signed and the other is left blank. As you can imagine, this is very confusing for the customer and even more so for anyone who looks back through the repair service, like the BAR representative!. Dealers should make sure that a customer provides their authorization in one location.

If there are multiple areas in which a customer can sign to provide their authorization, be sure they are all consistently signed. Otherwise, reduce the places where a customer can authorize the estimate to one signature block.

Improper Third-Party Designation

There are times when a Dealer unknowingly allows an individual who is not authorized to give consent for the repair service to make decisions and provide input on the repair service. This usually occurs when the person who brought in the vehicle is a friend, spouse, or sibling of the customer. For some Dealers, like service departments that are part of a new car dealership, the repair orders generated for the vehicle are usually pre-loaded with customer's information from the software. In these situations, the person who brings in the vehicle is not the same person as the customer who is prepopulated in the software. In the situation above, the Dealer believes that the customer who is prepopulated in the software is the customer. This is incorrect.

As stated earlier, the customer is the person who presents the vehicle for repair and is the *only* party who is able to authorize any repairs unless the customer properly authorizes a third-party designee. If the person who brings in the vehicle is different from the person who is in the Dealer's

database, the Dealer should slow down and take care to record the actual customer's name and information, who is the person who brought the vehicle in for service or repair.

Chapter 5: Additional Authorization

Importance of Obtaining Additional Authorization

Failing to obtain proper authorization is one of the top five complaint allegations received by the BAR from consumers. It is a violation of the Act that will result in disciplinary action by the BAR, including, but not limited to, revocation of the Dealer's registration (which allows them to operate their facility in California) and publishing the Dealer name on a publicly facing website along with violations. To add insult to injury, the Dealer that fails to obtain additional authorization for any work, service or repairs, is potentially giving away its services for free. In *Bennet v Hayes* (1975) 53 Cal. App 3d 700, the court ruled that if a Dealer fails to provide a customer with a written estimate and fails to obtain authorization before work begins, the shop is prohibited from collecting any of the costs for repairs it makes. The BAR does this by recommending that the facility refund the customer for the cost associated with the entire repair service, which includes parts, labor, and any associated taxes or fees.

This additional authorization is permission granted by the customer that allows the Dealer to perform the additional work. Without it, one can reasonably expect that the customer was never made aware of the additional work nor did they allow the Dealer to perform the additional work. Regardless of whether or not the additional work is performed for free, completed at no charge or covered by warranty, the BAR will still view it as an unauthorized repair service and may take disciplinary action against the Dealer for violating the Act.

Recognizing When Additional Authorization is Required

The work order operates as a contract that the Dealer must strictly follow. If the Dealer discovers that other services or repairs may be required while performing services outlined on the work order, the Dealer will need to obtain additional authorization to perform those additional services. Effectively, the Dealer and the customer need to take extra steps to modify the original contract and demonstrate it by creating additional documentation.

Practically speaking, Dealers are very good about identifying when additional authorization is necessary. However, Dealers are inconsistent about providing the *necessary documentation* (i.e. a required revised estimate that records the additional authorization).

Common Scenarios Requiring Additional Authorization

Though seemingly straightforward, Dealers may not always understand when additional authorization is required and how to properly document the additional authorization.. After

reviewing thousands of repair orders, we've identified the following common scenarios requiring additional authorization.

#1: Additional Repair Services

This is the most common and easily recognizable scenario when additional authorization must be obtained. This scenario arises when, after the customer has already authorized an initial repair estimate, the technician discovers that additional repair services are needed.

For example, a customer brings a vehicle to the Dealer for regularly scheduled maintenance and authorizes the Dealer to complete a multi-point inspection (MPI). As part of the MPI, the technician measures each tire to see if they are due for replacement or repair. The technician discovers that the tread depth of the rear tires are very low and need replacement. The technician cannot simply assume that the customer would want to replace the tires and unilaterally decide to do it. Rather, the tire replacement service requires additional authorization from the customer. The customer needs to be notified of the additional repair service on a Revised Estimate and obtain authorization from the customer to replace the tires. For a more detailed discussion, please see *Chapter 3: Revised Estimates and Tear Down Estimates*.

#2: Unilaterally Changing Method of Repair

This scenario happens most often in situations where the Dealer wishes to do something positive for the customer. After all, one good turn deserves another, right? If the technician, in the course of performing the authorized repair service, finds that an alternative service would save the customer time or money then the technician may mistakenly believe they can change the method or repair or service to save the customer money, without their consent. Unfortunately, in some circumstances this may be prohibited by the Act.

For example, a Dealer received authorization to replace a part, such as a radiator. While performing the repair service, the technician determines the part can be repaired, rather than replaced, at a significantly lower cost to the customer. The Dealer must first notify the customer of this potential change in a Revised Estimate and obtain additional authorization before they can change the method of repair. Changing the method of repair without authorization is considered fraud by the BAR. For a more detailed discussion, please see *Chapter 3: Revised Estimates and Tear Down Estimates*.

#3: Substituting Parts During Repair Service

This scenario arises most often when the Dealer carries a limited stock of replacement parts or obtains parts from multiple vendors. This sets up situations where a specific part that was

promised for a repair service may not be available when it comes time to actually perform the repair service.

For example, the customer authorizes a repair service that calls for the use of a new OEM headlamp assembly to replace a broken one. However, while performing the repair service, the Dealer does not have the new OEM headlamp assembly in stock and only has suitable aftermarket assemblies available. Even if the aftermarket part performs objectively in the same manner and costs the same amount (or even less), the Dealer must obtain authorization to substitute the new OEM part for the aftermarket part in the repair service.

#4: Complimentary Services Provided at “No Additional Cost”

To try to increase overall customer satisfaction, most Dealers perform complimentary repair services for customers in addition to the authorized services. These additional complimentary services are usually minor in nature, but no matter the type of service, the customer must provide additional authorization before the Dealer could perform the additional service.

For example, the customer authorizes a straightforward oil change and a multi-point inspection. In the course of performing the MPI, the technician finds that one of the interior dome lights of the vehicle is out and wants to replace it free of charge. The fact that the additional service is performed at no additional cost misleads the Dealer into believing that such repairs would be acceptable by the customer. However, the Dealer must still obtain additional authorization to perform the service.

A note for dealership Dealers: the same applies for repairs performed under a manufacturer's warranty or those performed under a federal safety recall. Regardless of the fact that these are covered by warranty or required by federal law, the repairs must have additional authorization before they can perform these repairs.

#5: Additional Repairs Requested by Customer

This scenario arises when the customer requests additional repairs after the initial repair service has been authorized and is underway. The Dealer may not proceed with the additional repairs until a revised estimate is prepared and authorization for the additional repairs is obtained.

For example, a customer authorizes an oil change and leaves the vehicle with the Dealer to pick up after work. Shortly after, the customer remembers that the windshield wiper blades need to be replaced. He calls the Dealer and requests that they perform this additional service.

Although the phone call acts as additional authorization and is sufficient for the Dealer to perform the repair, the Dealer must still create a revised estimate with all of the required notations of authorization and transpose them to the final invoice.

Obtaining and Properly Documenting the Additional Authorization

Written Additional Authorization

If the customer is physically present and can sign, the proper way to receive and document additional authorization here would be to have the customer sign and record the date of signature on the revised estimate⁴². The customer must be provided a copy of any document requiring his or her signature at the time of signing⁴³.

Oral/Verbal Additional Authorization

If the customer is not physically present and is only available via phone call, the Dealer will have to provide the revised estimate and receive the additional authorization verbally. To do this, the Dealer must communicate the additional parts and labor required to perform the service(s) and the additional cost. After the customer has authorized the additional work verbally, the Dealer needs to document the following on the work order *and* final invoice⁴⁴:

- A) The date, time, and name of the person authorizing the additional repairs;
- B) The telephone number called, if any; and
- C) The additional parts and labor needed to complete the additional services as well as the additional cost. As a best practice, it is recommended that the sales tax be included in the total cost.

If the Dealer cannot make these notations on the final invoice, the law allows the Dealer to have the customer sign a specific box on the invoice, that states:

"I acknowledge notice and oral approval of an increase in the original price."

_____ (signature or initials)⁴⁵

Electronic Additional Authorization

⁴² 16 CCR § 3353.1(b)

⁴³ Bus. & Prof. Code § 9884.7(a)(3)

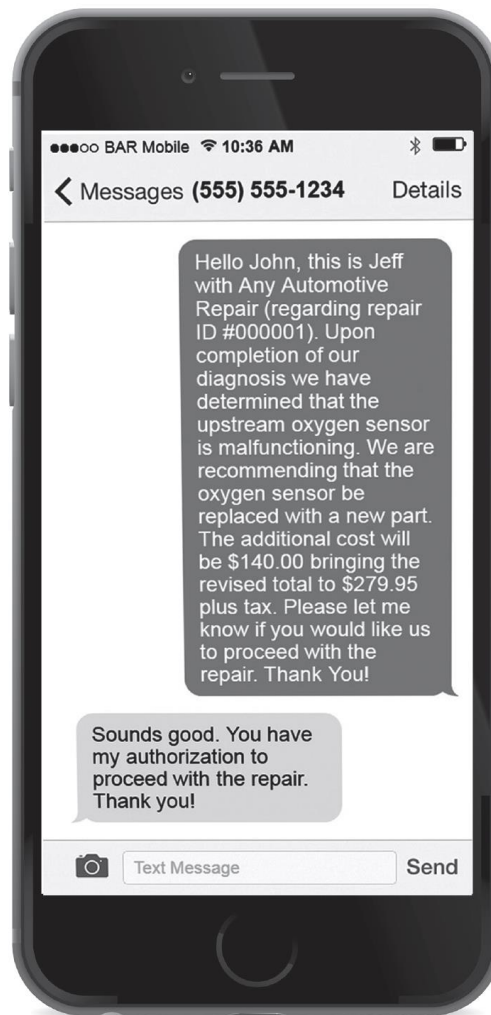
⁴⁴ 16 CCR § 3353.1(c)

⁴⁵ 16 CCR § 3356

If the customer provides electronic authorization, either through email or text message, the Dealer needs to document the following on the revised estimate:

- 1) the date, time, and name of the person authorizing the additional repairs;
- 2) the telephone number texted or email address contacted; and
- 3) Attach documents that memorialize the electronic communication, such as a screenshot of the text message or the email. This document must have a Unique Identifier linking all the records to that specific transaction. This is usually the Repair Order number but could also be another type of unique identifier⁴⁶.

See below for a sample of a text message electronic authorization:



Source: "Write It Right: A Guide for Automotive Repair Dealers," <https://www.bar.ca.gov/pdf/writeitright.pdf>; last revised in February, 2019.

For a more detailed discussion of authorization, please see *Chapter 4: Customer Authorization*.

⁴⁶ 16 CCR § 3358(e)

Multiple Revisions

Each time additional service or repair work is necessary, changing method of repair, parts substituted or other revisions are needed, the Dealer must again prepare a revised estimate and obtain and document customer authorization. This is very common with auto body repairs where multiple revisions (or supplements for collision repair) occur.

Chapter 6: Final Invoices

Invoice Overview

The invoice is provided to the customer upon completion of all repairs for a specific job. It is a detailed breakdown of exactly what was performed on the customer's vehicle and how costs were calculated. The invoice acts as the receipt for all the services performed to the vehicle and is generally the last document that will be provided to the customer. This is why it is sometimes referred to as the "final invoice". The invoice also serves as a guide in leading the reader through the entire process of the service repair from beginning to the end.

Much of the information on the invoice will be transferred from the estimate, work order, and revised estimates, and includes all the authorization notations. The invoice must describe the parts and labor and the total cost of the repair service. The final invoice must be provided to the customer upon completion of repair work and before the customer takes delivery of the vehicle. The customer signs the invoice to acknowledge that repairs were completed and that the customer was provided a copy of the invoice⁴⁷. Invoices must be written in a clear and simple manner at a sixth-grade level so the customer can easily understand what the Dealer is describing.

Many of the documentation requirements on an invoice are like those required on an initial estimate. The Dealer must list each part supplied on the invoice in such a manner that the customer can understand what was purchased and the price for each described part. Acronyms, without legends or keys, are not allowed, such as "R&R" for "remove and replace" and "TPMS" for "tire pressure monitoring system." It is acceptable to identify parts by brand name or other comparable designation⁴⁸.

Information to Transferring Content from Estimate and Pre-Printed Forms

The information from the estimate, work order, or revised estimate must be transferred to the invoice, including:

- Dealer information on Invoice - This includes the Dealer business name, address, BAR license/registration number as reflected on the Dealer registration, phone number (which must be the same as the phone number used in advertisements and phone directory), email address, EPA number (if the Dealer is charging for hazardous waste), work order number, warranty claim number, service writer name, intake date, and time and all "backer" language.

⁴⁷ 16 CCR § 3356(j)

⁴⁸ Vehicle Code § 12001

- Customer Information on Invoice – This includes customer name, address, phone number, email address, and any other pertinent contact information. The customer cannot be an insurance company or Dealer. If the customer is someone other than the person who brought the vehicle in for service make sure the “Designation of Person to Authorize Additional Diagnoses, Repair and Parts” form has been properly documented and transferred to the invoice. For a more detailed discussion on third party designation, please see *Chapter 4: Customer Authorization*.
- Vehicle information on Invoice - This includes vehicle mileage (odometer reading), recommended that automotive list both “in” and “out” odometer readings on invoice. Other vehicle information includes year, make, model, color, license number and VIN number.
- Description of Problem, Diagnoses, and Recommendations – This includes information from estimate, including the customer description of problem, diagnoses, justification for work or service recommended, and authorization notations.

See below for a sample invoice.

Any Automotive Repair

BAR Registration No. **ARD123456**
 EPA Identification No. **CAL7654321**
 10123 Broadway Blvd.
 Anytown, CA 90001
 Phone: (555) 555-5555
 Fax: (555) 555-5556
 Email: someone@example.com

INVOICE

ID #: 000001
 Date: January 3, 2019

Customer Information:

John Doe
 1000 Rubicon Road
 Anytown, CA 90001
 Home/Cell: (555) 555-1234
 Work/Other: (555) 555-5678

Vehicle Information:

2000 Jeep Wrangler
 Odometer: 103,292
 License: 4BY4CAL
 Engine: 4.0L

LABOR OPERATION OR PART DESCRIPTION ¹	QTY	PARTS	LABOR	PRICE
Ultimate Oil Change Replace Engine Oil and Engine Oil Filter			\$32.00	\$32.00
5W-30 Engine Oil – Quart	4.5	\$4.00		\$18.00
Engine Oil Filter #P960	1	\$9.95		\$9.95
Diagnosis Malfunction indicator light (MIL) is on. No drivability concern noted by customer. Road test, retrieve diagnostic trouble codes (DTCs), diagnose cause, and provide repair recommendation.			\$80.00	\$80.00
Road tested vehicle. Verified MIL is on and no drivability concerns. Retrieved DTC P0151 (Low Oxygen Sensor Voltage), pulled freeze frame data and tested oxygen sensor circuit per factory service manual. Verified circuit voltage is within specification. Found upstream oxygen sensor faulty. Recommend replacing oxygen sensor, clearing DTC and road test to verify repair.				
Replace upstream oxygen sensor, clear DTCs, and road test to verify repair.			\$80.00	\$80.00
New Oxygen Sensor - Part# 56041212AE	1	\$60.00		\$60.00
			SUBTOTAL LABOR	\$192.00
			SUBTOTAL PARTS (taxable)	\$87.95
			SUBTOTAL	\$279.95
			SALES TAX	\$7.70
			TOTAL	\$287.65

AUTHORIZATION					
Original Estimate:	\$139.95	Date:	1/3/2019	☒ In Person	
Authorized By:	<i>John Doe</i>	Time:		☐ By Phone	
		Phone #:		☐ By Text	
		Email:		☐ By Email	
Additional Cost:	\$140.00	Revised Estimate:	\$279.95	Date:	1/3/2019
				Time:	10:36 am
Authorized By:	John Doe	Phone #:	(555) 555-1234	☒ By Text	
		Email:		☐ By Email	
Description:	Replace upstream (front) oxygen sensor and verify repair.				

Make all checks payable to *Any Automotive Repair*. Payment is expected upon completion of all work. All repairs are covered by our 12-month/12,000-mile warranty unless otherwise stated on this document. See reverse side for information regarding warranty exclusions, limitations, and requirements.

¹ All parts are new unless specified otherwise.

THANK YOU FOR YOUR BUSINESS!

Source: "Write It Right: A Guide for Automotive Repair Dealers," <https://www.bar.ca.gov/pdf/writeitright.pdf>; last revised in February, 2019.

Transfer the Description of Parts and Labor

The invoice must include an itemized list of all services and repair work performed and the price for each. Any diagnosis, warranty repairs, recall work or repairs performed at no additional charge or “free” must also be listed. Each part supplied must be itemized, described, and identified in such a manner that the customer can understand what was purchased and the price for each described part.

The invoice must also state if each part is new, used, rebuilt, reconditioned and whether any crash parts are Original Equipment Manufacturer (OEM) or non-Original Equipment Manufacturer aftermarket.

Part kits containing several components may be listed as a single part on the invoice and identified by brand name and corresponding part number or similar designation⁴⁹.

If a replaced part was not returnable to customer, the Dealer must document this on the invoice⁵⁰.

Transfer Prices, Costs, and Subtotals, and Applicable Fees

The invoice must have a series of subtotals. These include the following⁵¹:

- 1) Subtotal price for all service and repair work performed;
- 2) Subtotal price for all parts supplied, not including sales tax;
- 3) Sales tax, if applicable; and
- 4) Total cost of all service and repair work, parts supplied, and applicable sales tax.

If a Dealer is charging other fees that have been stated on the estimate and authorized by the customer, such as toxic waste fee, tire fee, tire disposal fee or battery fee, these fees must be separately itemized on the invoice.

Items generally noted as “shop supplies,” “miscellaneous parts” or “fees for electronic communication with Smog Check database” and the like are prohibited⁵².

The Dealer does not need to reference labor hours (known as a “labor rate”) or time spent on a specific task on the invoice. However, there are exceptions for brake and lamp stations that must conspicuously post a list of prices for their services as either a fixed fee or an hourly rate on

⁴⁹ Bus. & Prof. Code § 9884.8; 16 CCR §§ 3356

⁵⁰ 16 CCR § 3355

⁵¹ Bus. & Prof. Code § 9884.8; 16 CCR §§ 3356(c)(3)-(6)

⁵² 16 CCR § 3356(g)

a time-and-material basis. Additionally, Smog Check stations must conspicuously post a list of prices for their services and hourly labor rate for repairs⁵³.

Documenting Authorizations

The invoice must contain the notations of all authorizations and the Dealer shall give the customer a legible copy of the invoice⁵⁴. For a more detailed discussion on authorizations, please see *Chapter 4: Customer Authorization* and *Chapter 5: Additional Authorization*.

Documenting Additional Authorizations

Additional Oral or Electronic Authorization

If additional authorization was provided either orally or electronically, the Dealer must include the date and time of the additional authorization, the name of the person who authorized the additional repairs, the telephone number or email address contacted to obtain additional authorization (if applicable), a description of all additional parts and labor, the cost for additional parts and labor, and the total price for all repairs⁵⁵. Though not explicitly required, it is recommended that the Dealer make a note to the customer of the sales tax associated with the repair service as a best practice. For a more detailed discussion on oral or electronic authorizations, please see *Chapter 2: Initial Estimates*, *Chapter 4: Customer Authorization* and *Chapter 5: Additional Authorization*.

Alternative to Documenting Additional Oral Authorization: Customer Signature Box

Instead of detailing additional oral authorization on the invoice as described above, the Dealer may obtain the customer's signature or initials on an "Acknowledgement of Notice and Consent" statement, which must include the language provided below⁵⁶. When using the "Acknowledgement of Notice and Consent" statement, the documentation requirements of the oral authorization still must be properly recorded.

"I acknowledge notice and oral approval of an increase in the original price."

_____ (signature or initials)

⁵³ 16 CCR §§ 3307(d), 3340.15(d)

⁵⁴ 16 CCR § 3356

⁵⁵ 16 CCR § 3356(e)

⁵⁶ 16 CCR § 3356(e)(2)

It is important to note that a Dealer should not have the customer sign an "Acknowledgement of Notice and Consent" statement of an increase in price if it does not apply.

Documenting Unusual Circumstances Authorization

If the customer authorization was provided under unusual circumstances, the invoice must include the date and time the authorization of the estimate, the name of the person who gave the authorization, and the telephone number or email address contacted to obtain authorization⁵⁷.

Other Invoice Requirements

Other information must be properly documented on the invoice where applicable in very specific repair services. Below are some of the most common requirements:

Results of Tire Pressure Check: If a Dealer was required to perform a tire pressure check, the results of the tire pressure check must be described on the invoice⁵⁸. Note: the following Dealers are exempt from this requirement: auto body shops, auto glass installers, auto parts distributors and retailers, and auto dismantlers.

Sublet Repairs: If the sublet repair was acknowledged on the estimate, the invoice should also separately describe that the repairs were performed by someone other than the Dealer⁵⁹.

Hazardous Waste: If the Dealer has itemized the hazardous waste fee on the estimate and obtained approval, then the Dealer must also itemize the hazardous waste fee on the invoice along with the Dealer's EPA number⁶⁰.

Towing and Access Fee Notice on the Invoice: If a Dealer charges a customer for towing, storage or both (except for storage unrelated to the tow, such as after a repair service is completed), the Dealer must post in the office area in plain view of the public a "Towing Fees and Access Notice" and have copies readily available to the public. Also, on either the front or reverse side of the invoice, the Dealer must also state the following in a contained text box and printed in no less than 10-point type⁶¹:

⁵⁷ 16 CCR § 3356(d)

⁵⁸ 17 CCR § 95550

⁵⁹ 16 CCR § 3353(d)

⁶⁰ 16 CCR § 3357

⁶¹ Vehicle Code § 22651.07(a)(3)

"Upon request, you are entitled to receive a copy of the Towing Fees and Access Notice."

Towing Reimbursement: Any towing reimbursement must be separately itemized on the invoice.

Customer Declination of Repair: If applicable, the invoice must contain a notation of the customer's declination of repair or reassembly after a tear down of the customer's vehicle⁶².

Return of Parts: If the customer requested a return of parts on the initial estimate, the invoice must reflect. If replaced parts cannot be returned that shall be documented on the invoice⁶³.

Air Conditioning Repair Work: If air conditioning work was performed, the invoice must reflect the high and low side system operating pressures that were measured and recorded and the center air distribution outlet temperatures that has been measured and recorded⁶⁴. As an aside: make sure that all of the technicians who work on motor vehicle air conditioning systems complete an Environmental Protection Agency (EPA) certified training and certification program like ComplyAuto. This is a lifetime certification as long as the technician can provide proof of certification.

Ball Joint Work: If ball joint work was performed, the invoice must reflect the degree of wear or looseness of the ball joint being replaced⁶⁵.

Record Retention: All invoices and records pertaining to repairs must have a unique identifier linking documents such as a work order number and be kept for a minimum of three (3) years⁶⁶. As a best practice, however, Dealers should keep records for a minimum of four (4) years.

Common Mistakes in an Invoice

Here are some common mistakes that most Dealers make when it comes to generating a final invoice for the customer.

#1: Unclear Miscellaneous or Shop Supply Charges

⁶² 16 CCR § 3356(h)

⁶³ 16 CCR §§ 3355, 3356(i)

⁶⁴ 16 CCR § 3366

⁶⁵ 16 CCR § 3360.2

⁶⁶ 16 CCR § 3358

Charging for items generally noted as “shop supplies” or “miscellaneous” is prohibited. The customer may only be charged for supplies used during the repair service. The cost of these supplies must be included as part of the estimate and supplies must be itemized on the invoice.

#2: Using Acronyms

Common industry-recognized acronyms can be used. However, they cannot be used when describing parts and labor in the estimate or invoice without a key or legend that explains the acronyms. The estimate and invoice must itemize and describe all parts and labor for a specific job so the customer can easily understand what was purchased.

#3: Referencing Labor Hours

Unless a Dealer is a brake and lamp station or smog check station (which requires posting of labor rates), or the Dealer is charging the customer based on the actual time spent on a specific task, labor charges only need to be specified in a dollar amount. The Dealer may determine the dollar amount based on labor units required for a specific task. Any reference to specific labor hours may be misleading because the customer could reasonably believe that the figure is meant to discern actual labor hours spent on a repair service.

#4: Not Itemizing “No Additional Cost” or “Free” Services

All services performed to the customer's vehicle must be listed on the final invoice, even if the service was performed at no additional cost, on a complimentary basis or under a manufacturer warranty.

#5: Incomplete Multipoint Inspections

If a multipoint inspection was performed, the results of the inspection must be described on the invoice. This can be done two ways, either 1) attach a completed multipoint inspection form to the customer copy of the invoice or 2) describe the specific inspection results in the labor description on the invoice. Failure to describe the multipoint inspection results is a violation of the Act.

Chapter 7: The “Backer”

Backer Language

Obtaining the customer's authorization to work on the vehicle satisfies the authorization requirements. It also creates a legal contract between the Dealer and the customer. This authorization not only describes the price and type of parts for the repair, but also establishes the terms and conditions, provides disclosures, and outlines the rights and duties of the parties. These additional terms are usually found on the reverse side of the estimate and invoice, therefore they are commonly referred to as “backer language”. A statement should be on the face of the estimate and invoice that makes reference to the backer language such as:

I have read and acknowledged the additional terms and conditions on the reverse.

Customer Signature x_____

The backer language should not be dismissed as it does carry legal ramifications. *The language should be drafted and reviewed carefully by the Dealer and qualified legal counsel.* Below are examples of types of areas that the backer language may cover.

Guarantee and Warranty

A Dealer is not required by law to provide a guarantee of its work, but many Dealers still do so. If a guarantee or warranty is provided by the Dealer, the guarantee must be in writing and a legible copy must be delivered to the customer with the invoice itemizing the parts, components, and labor represented to be covered by such guarantee.

Below is a sample of a Limited Warranty:

THE ACCURACY OF THE MANUFACTURER WARRANTY INFORMATION CONTAINED IN THIS DOCUMENT CANNOT BE GUARANTEED, PARTICULARLY SINCE THIS INFORMATION IS SUBJECT TO CHANGE BY THE MANUFACTURER. PLEASE SEE A PARTS OR SERVICE MANAGER FOR THE FULL TEXT COPY OF THE MANUFACTURER'S WARRANTY THAT DESCRIBES ADDITIONAL COMPONENT COVERAGE, REPAIR OBLIGATIONS, EXCLUSIONS, TERMS, AND CONDITIONS NOT EXPLAINED BELOW.

No Dealer-Provided Warranties. The only warranties applying to a part being sold or provided by the dealer are those which may be offered by the manufacturer or supplier of the part. Only such manufacturers or suppliers shall be liable for performance under such warranties. Dealer neither assumes nor authorizes any person to assume for it any liability in connection with the sale of any part or service. Dealer makes no warranties, express or implied, and hereby disclaims all warranties, including without limitation warranties of merchantability and fitness for a particular purpose. In no event will dealer be liable for any consequential damages, loss of use, loss of time, loss of profits, loss of income, or incidental damages.

REPLACEMENT PARTS AND ACCESSORIES LIMITED WARRANTY

Warranties that include genuine replacement parts and accessories are free of charge. Warranties that do not include genuine replacement parts and accessories are subject to the following terms and conditions. This warranty covers genuine new or remanufactured replacement parts and accessories sold by the dealer. This includes accessories installed by the dealer or a dealer prior to retail delivery of a new vehicle.

Warranty Coverage

1996 and Newer Model Years

genuine replacement parts (other than the battery) and Accessories purchased by a customer from a [] Importer/Distributor or a [] dealer and installed by a [] Importer/Distributor or a [] dealer are covered for 12 months /12,000 miles from the installation date or the remainder of the warranty coverage applied to the component by []

genuine replacement parts (other than the battery) and Accessories purchased by a customer from a _____ dealer and not installed by a _____ Dealer are covered for the first 12 months/12,000 miles from the purchase date for the amount of the part purchase cost only and excludes installation labor charges.

Towing is not covered under Replacement Parts and Accessories Warranty, unless the vehicle is still covered under the New Vehicle Limited Warranty or the component is covered under the Powertrain Limited Warranty. When replacing a component under the Replacement Parts and Accessories Warranty that is part of an exchange program, the replacement part must be procured through the appropriate exchange service.

Note: Lifetime and extended warranties may pertain to the replaced component; for

warranty terms and conditions, please ask a Service Manager for a copy of the applicable policy in the **Warranty Policies & Procedures Manual**.

What Is Not Covered

- Damage or corrosion due to accidents, misuse, or alterations.
- Damage or surface corrosion from the environment such as acid rain, airborne fallout (chemicals, tree sap), stones, salt, road hazards, hail, wind storm, lightning, floods, and other natural disasters.
- Normal wear, tear or deterioration such as discoloration, fading, deformation, blurring, etc.
- Air conditioner refrigerant charge after the first 12 months, unless replenished as part of a warranty repair.
- Replacement batteries (covered under a separate warranty)
- Replacement parts or accessories installed on any _____ vehicle registered or normally operated outside of the United States, Canada, Puerto Rico, U.S. Virgin Islands, Guam, Saipan or American Samoa.
- Replacement parts or accessories installed on a _____ vehicle in which the odometer has been altered, or on which the actual mileage cannot be readily determined.
- Replacement parts or accessories used in applications for which they are not designed.
- Replacement parts or accessories installed improperly by dealers, Importer/Distributor other than _____
- Any replacement part or accessory without proof of purchase or replacement date.
- _____ replacement parts or accessories which _____ dealers may sell or install on your _____ vehicle
- If the vehicle has been classified a total loss and/or sold for salvage purposes or branded for any other reasons.
- Removal of the vehicle from the warranty covered market for which it was produced.

If a Dealer does not provide a warranty for services, the backer language should disclose that fact and that services are provided on an "AS-IS" basis (without a guarantee or warranty) to disclaim any implied warranties.

Amount Due for Repairs

The backer should contain language that specifies the timeframe in which the customer must pay for the completed repair services. Most Dealers provide that all charges for parts and labor are due at the time the vehicle is delivered, or within three days of the date that the customer is given notice of the completed repair services, whichever is sooner. An example of this language is as follows:

All charges for repair(s) are due and payable simultaneously with the delivery of the vehicle or prior to delivery upon expiration of three (3) days after notice that the repairs have been completed. Such notice may be given (1) orally, via telephone call made to a number provided by the

customer, (2) via written notification to the address provided by the customer or (3) electronically, via voice message, text message, or email made to the telephone number or email address provided by the customer. Notice shall be deemed to have been given upon transmission of the electronic message or phone call, and, if mailed upon deposit into the United States mail.

Storage Charge

Most Dealers include language establishing a deadline to pay for the services performed. Backers should contain language establishing a storage charge for circumstances where the vehicle is not immediately picked up by the customer and requires storage of the customer's vehicle. Absent such language, the customer may challenge the applicability of these storage charges. An example of this language is as follows:

A storage charge of \$___ per day will be charged for any vehicle not called for within three (3) days after such notice is given.

Sublet Repairs

If a Dealer is not equipped to perform certain specialized repairs (e.g. windshield repairs, wheel alignment, etc.) then the vehicle would need to be sublet to a third party. If any service or repair must be sublet to someone other than the Dealer or their employees then the sublet must be stated and disclosed to the customer on the estimate. The Dealer must include with the estimate a statement of any sublet repair to be performed on the vehicle.

There may be situations where the Dealer has a sublet statement on the backer language, but this does not relieve the Dealer of the obligation to disclose the sublet on estimate.

Labor Time

Labor charges for certain repairs are usually calculated by multiplying the established flag rate by the labor rate hours established for the specific repair. Dealers should provide for a charge for labor in the estimate and invoice but not refer to any charges based upon time unless the facility charges the customer based upon a time interval. Consumers are often confused about the manner in which labor charges are calculated, so clarification in this area can be helpful. An example of this language is as follows:

Unless otherwise indicated, our charges for labor are not based on the actual time spent performing services but are prices for particular jobs. You will not be charged more than the estimated price authorized plus any applicable taxes. If additional repairs are necessary, you will be contacted for additional approval of a revised estimate.

Proposition 65 Language

Proposition 65 (Prop 65), implemented and enforced by the Office of Environmental Health Hazard Assessment (OEHHA), requires businesses in California to notify customers of chemicals that are known to the state to cause cancer, birth defects or other reproductive harm that are in the products they purchase or that are present in the area prior to exposure⁶⁷. In addition to posting signs on the Dealers' premises, the Prop 65 warning should also appear in the backer language warning customers about chemicals contained in the replacement parts that were purchased by the customer or replacement parts that were returned.

For further information about Proposition 65 see <https://www.oehha.org/prop65.html>. An example of this language is as follows. Note that a yellow warning triangle symbol must accompany the warning message and be placed to the left of the word "warning."

PROPOSITION 65 WARNING FOR PARTS & SERVICE

 **WARNING:** *Operating, servicing and maintaining a passenger vehicle or off-highway motor vehicle can expose you to chemicals including engine exhaust, carbon monoxide, phthalates, and lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. To minimize exposure, avoid breathing exhaust, do not idle the engine except as necessary, service your vehicle in a well-ventilated area and wear gloves or wash your hands frequently when servicing your vehicle. For more information go to www.P65Warnings.ca.gov/passenger-vehicle.*

As a reminder, a different Prop 65 Sign (with different content) will be needed depending on the circumstances and the location in which the sign is placed. For example, the Proposition 65

⁶⁷ Health & Safety Code § 25249.5 et seq.

sign placed in the service department will be different from the sign that is located in the showroom, which is different from the sign that is located near the food area.

Song-Beverly Consumer Warranty Act

The Song-Beverly Consumer Warranty Act establishes California-specific requirements for consumer warranties. The law requires that if a manufacturer of a consumer product (e.g., vehicle component), where the product is covered by a warranty, cannot repair the product after a reasonable number of attempts, the manufacturer is required to either replace or repurchase the product at the customer's option.

The law further requires that every invoice for warranty repairs or service must clearly and conspicuously incorporate the following notice in at least 10-point boldface type⁶⁸:

NOTICE TO CONSUMER

A buyer of this product in California has the right to have this product serviced or repaired during the warranty period. The warranty period will be extended for the number of whole days that the product has been out of the buyer's hands for warranty repairs. If a defect exists within the warranty period, the warranty will not expire until the defect has been fixed. The warranty period will also be extended if the warranty repairs have not been performed due to delays caused by circumstances beyond the control of the buyer, or if the warranty repairs did not remedy the defect and the buyer notifies the manufacturer or seller of the failure of the repairs within 60 days after they were completed. If, after a reasonable number of attempts, the defect has not been fixed, the buyer may return this product for a replacement of a refund subject, in either case, to a deduction of a reasonable charge for usage. This time extension does not affect the protections or remedies the buyer has under other laws.

While the law only requires that this information be placed in writing, most Dealers place the notice in the backer language. If the notice is placed on the backer language, the face of the estimate and invoice must include the following statement in at least 10-point boldface type. An example of this language is as follows:

Notice to Consumer: Please read important information on the back.

⁶⁸ Civil Code § 1793.1(a)(1)(B)(2)

Personal Items

Dealers, on occasions, face claims from customers when personal items left in their vehicles are stolen or damaged. In addition to requesting customers to remove personal belongings from the vehicle prior to the repair service, the backer language should include a statement acknowledging that the Dealer has no responsibility for the customer's personal belongings left in the vehicle when the vehicle is in the Dealer's possession. An example of this language is as follows:

Customer agrees to remove all personal property from vehicle and agrees that the Dealer is not obligated to inspect the vehicle for personal property. Customer releases the automotive repair facility from any liability or obligation with respect to the customer's personal property left in the vehicle.

Delivery of Vehicle

Absent any agreement to the contrary, the Dealer has a contractual relationship with the customer, who is the person who presented the vehicle for repairs. If the customer does not authorize the vehicle's delivery to a third party upon completion of the repair service, the Dealer could face challenges from the customer if somebody other than them pays for repairs and takes delivery of the vehicle. To avoid this situation, the backer language should contain language authorizing the Dealer to release the vehicle to any person who presents the estimate and pays for the completed service. An example of this language is as follows:

Customer authorizes Dealer to deliver the vehicle described herein to any person who presents this estimate and pays the charges due.

Lien Rights

If the customer fails to pay for repairs, the Dealer has specific rights under lien laws to financially protect itself. Lien rights will be further discussed in a separate chapter. The Dealer should advise the customer of these rights in the backer language. An example of this language is as follows:

The repair facility shall have a consensual lien on the vehicle for any outstanding obligations the customer has to the repair facility regardless of whether the repair facility has a statutory lien on the vehicle. The repair facility has the right to retain the vehicle in its possession until all charges

have been paid in full. In addition to any and all other remedies available, customer authorizes repair facility to enforce such lien by conducting a lien sale and selling vehicle at public auction after providing notice to the legal owner, registered owner, and the Department of Motor Vehicles of its intent to do so.

Towing and Fee Notice

If a Dealer charges customers for towing, storage or both (except of storage unrelated to the tow, such as after a repair service is completed), the Dealer must post a Towing Fees and Access Notice in the office area in plain view of the public and have copies readily available to the public upon request⁶⁹. The posting explains the vehicle owner's rights and responsibilities if the owner's vehicle is towed.

Dealers that do not provide towing services, such as those who arrange for or take possession of vehicles from third party towing companies, are not required to post the sign but must provide a copy of the notice upon request. An example of this language is as follows:

Upon request, you are entitled to receive a copy of the Towing Fees and Access Notice.

Attorney Fees

In case of litigation between the parties, the prevailing party would only be able to collect attorneys' fees if it is agreed upon in writing by the parties. Such language should be contained on the backer. An example of this language is as follows:

In the event of legal action between the repair facility and customer, the prevailing party shall be awarded reasonable attorney's fees and costs.

Additional Backer Language

The following are additional terms and conditions that may be included in the backer language.

⁶⁹ Vehicle Code § 22651.07

- Authorized Operation of Vehicle: I grant permission for Dealer and its employees to operate my vehicle on public thoroughfares for the purpose of repairs, inspection, and test driving to ensure proper function of the vehicle.
- Estimated Completion Date: The Dealer does not guarantee a completion date. The completion date given is approximate and may change without notice.
- Permission to Share Information: I grant permission to share my information, including, but not limited to, the vehicle identification number with appropriate third-party vendors for the procurement of necessary replacement parts for the repair of vehicle.
- Unavailability of Parts: Repair facility is not responsible for the unavailability of parts or services from third parties.

Chapter 8: Special Requirements for Specific Repair Services

Certain repair services have their own set of requirements under the Act and must be followed. In this chapter, we will discuss transmission repairs, ball joint services, and smog check station services.

Automatic Transmission Services

The Act outlines minimum requirements of a transmission repair service including what the Dealer must do prior to removing the transmission as well as the standards for rebuilding the transmission. Generally speaking, the accepted trade standards for automatic transmission repair services require certain actions when a Dealer:



- Inspects and diagnoses an automatic transmission
- Removes and repairs an automatic transmission
- Rebuilds an automatic transmission
- Replaces an automatic transmission

As a point of clarification, these accepted trade standards apply to the automatic transmission portion of the transaxle. If the transmission and the differential are integrated into the transaxle assembly and share the same oil supply then this will apply to both the transmission and the differential⁷⁰. The torque converter is also considered to be part of an automatic transmission.

Inspection Before Removing the Transmission

An automatic transmission must be inspected before it is removed from a vehicle for purposes of repair or rebuilding. This inspection must determine whether or not the replacement or adjustment of any external part (or parts) will correct the specific malfunction of the automatic transmission.

The Electronic Control Module (ECM)

⁷⁰ 16 CCR § 3361.1

In the case of an electronically controlled automatic transmission, this inspection shall include a diagnostic check (including the retrieval of any diagnostic trouble codes) of the electronic control module ("ECM") that controls the operation of the transmission. If minor service and/or replacement or adjustment of any external part or parts of companion units can reasonably be expected to correct the specific malfunction of the automatic transmission, then prior to removal of the automatic transmission from the vehicle, the customer shall be informed of that fact. If a diagnostic check of an ECM cannot be completed due to the condition of the transmission, the customer shall be informed of that fact and a notation shall be made on the estimate⁷¹.

The reason for this requirement is to ensure that the Dealer performs all of the relatively cost-effective measures that may remedy the problem before taking on a more costly service in removing the transmission.

Documentation Requirements When an Exchange is Necessary

When the word "exchanged" is used to describe an automatic transmission repair service, it means that the automatic transmission that will be placed in the customer's vehicle is not the original unit that is removed from the vehicle. Therefore, it must be clearly noted as an "exchanged" transmission on the estimate and the invoice. Also, the word "exchanged" must be accompanied by a word or description to describe the transmission replacement, such as "new," "used," "rebuilt," "remanufactured," "reconditioned," or "overhauled," or by any expression of like meaning⁷².

Also, before removing an automatic transmission from a vehicle, the Dealer must also disclose on the estimate of any applicable guarantee or warranty that may apply.

Transmission Advertising and Repair Standards

Any Dealer that advertises or performs, directly or through a sublet contractor, automatic transmission work and uses the words "exchanged," "rebuilt," "remanufactured," "reconditioned," or "overhauled," or any expression of like meaning, to describe an automatic transmission shall only do so when all of the following work has been done since the transmission was last used⁷³:

1. All internal and external parts, including case and housing, have been thoroughly cleaned and inspected.

⁷¹ Id.

⁷² 16 CCR § 3361.1(b)

⁷³ 16 CCR § 3361.1

2. The valve body has been disassembled and thoroughly cleaned and inspected unless otherwise specified by the manufacturer.
3. All bands have been replaced with new or relined bands.
4. All the following parts have been replaced with new parts:
 - a. Lined friction plates
 - b. Internal and external seals including seals that are bonded to metal parts
 - c. All sealing rings
 - d. Gaskets
 - e. Organic media disposable type filters (if the transmission is so equipped)
5. All impaired, defective, or substantially worn parts not mentioned above have been restored to a sound condition or replaced with new, rebuilt, or unimpaired parts. All measuring and adjusting of such parts has been performed as necessary.
6. The transmission's electronic components, if so equipped, have been inspected and found to be functioning properly or have been replaced with new, rebuilt, or unimpaired components that function properly.
7. The torque converter has been inspected and shall be examined, cleaned, and made serviceable before the rebuilt, remanufactured or overhauled transmission is installed. If the torque converter cannot be restored to a serviceable condition, then the customer shall be so informed. With the customer's authorization, the converter shall be replaced with a new, rebuilt, remanufactured, reconditioned, overhauled, or unimpaired used torque converter. A torque converter shall not be represented as rebuilt, remanufactured, reconditioned, or overhauled unless the torque converter shell has been opened, all components of the overrunning clutch assembly have been inspected and replaced as required, all friction materials have been replaced as required, all rotating parts have been examined and replaced as required, the shell has been resealed, and the unit has been pressure tested.

The Torque Converter

The torque converter is also considered to be part of an automatic transmission⁷⁴. It must be examined, cleaned, and made serviceable before it is rebuilt, remanufactured or an overhauled transmission is installed.

If the torque converter cannot be restored to a serviceable condition, the customer must be informed and, with the customer's authorization, the torque converter must be replaced with a new, rebuilt, remanufactured, reconditioned, overhauled or unimpaired used torque converter.

The torque converter cannot be represented as rebuilt, remanufactured, reconditioned or overhauled unless it has been opened, all components of the overrunning clutch assembly have

⁷⁴ 16 CCR § 3361.1(d)

been inspected and replaced as necessary, all rotating parts have been examined and replaced as necessary, the shell has been resealed, and the unit has been pressure tested.

Ball Joint Services

Ball joints are assemblies that carry the vertical and horizontal stresses of the front suspension system of a vehicle while still allowing for suspension movement and steering. The accepted trade standards as related to ball joints specify requirements for the following services:

- Measuring wear and/or looseness of the ball joints
- Adjusting any mechanically adjustable ball joints
- Recommending replacements of the ball joints

Equipment Requirements for Ball and Joint Repair Services

Any determination that a ball joint is worn or loose must be made with an instrument specifically designed and manufactured for measurement of ball joint wear or looseness⁷⁵.

The instrument must be used, calibrated, and maintained in accordance with the instructions issued by its manufacturer. The manufacturer must be the vehicle's OEM or a manufacturer who is generally known within the automotive repair industry as a supplier of such instruments⁷⁶. A ball joint that has been manufactured with a means of manual adjustment to compensate for wear must be adjusted in accordance with the instructions of the manufacturer⁷⁷.

Recording Ball Joint Measurements on the Invoice

If servicing a ball joint that is equipped with an integral means of measuring wear or looseness, the measurement must be made and reported on the invoice in accordance with the manufacturer's directions⁷⁸.

If a ball joint is sold and installed, the degree of wear or looseness of the ball joint being replaced must be recorded on the customer's final invoice stated in thousandths of an inch or in millimeters and to the specifications of the OEM or replacement parts manufacturer. Also, the maximum allowable wear or looseness permitted by the OEM or by the replacement parts manufacturer must be stated⁷⁹.

⁷⁵ 16 CCR § 3360.2(a)

⁷⁶ 16 CCR § 3360.2(b)

⁷⁷ 16 CCR § 3360.2(f)

⁷⁸ 16 CCR § 3360.2(e)

⁷⁹ 16 CCR § 3360.2(d)

The foregoing requirements are not to be construed as prohibiting the sale and installation of ball joints when the sale and installation are made with the consent of the customer, provided that a full disclosure of the requirements, as provided for under the BAR accepted trade standards, is made to the customer⁸⁰.

Smog Check Station Services

Smog Check Estimates

A smog check estimate must contain all of the same information that is required in an initial estimate.

The smog check estimate must also contain the following:

1. If it is a test and repair station, the Dealer must include a notice stating that the customer may choose another Smog Check station to perform needed repairs, installations, adjustments, or subsequent tests⁸¹.
2. If it is a test and repair station, the Dealer must disclose both orally and in the estimate, if the vehicle may not be repaired in any of the following circumstances:
 - a. the station does not have adequate equipment, personnel, tools, or reference materials to repair the vehicle, should the vehicle fail its inspection;
 - b. the station, as a matter of policy, does not repair certain types, makes or models or vehicles; or
 - c. the station, as a matter of policy, does not repair certain types of vehicle inspection failures (e.g., tailpipe, fuel evaporative system, readiness monitors, etc.)⁸².

Smog Check Invoices

In addition to all the information required in the invoice, a smog check invoice must have attached the copy of the Vehicle Inspection Report⁸³. Though Dealers can generally charge for additional services and fees if they are itemized in the invoice (so that the customer is aware of what they are paying for), you cannot do that on smog check station invoices. Specifically, "fees for electronic communication with a smog check database" is prohibited.

⁸⁰ 16 CCR § 3360.3

⁸¹ Health & Safety Code § 44033(c)

⁸² 16 CCR § 3340.16.5(b)

⁸³ Bus. & Prof. § 9884.8; 16 CCR §§ 3340.41(a), 3356

Smog Check Stations Performing Repairs

In general, a licensed smog check station cannot sublet inspections or repairs required as part of the Smog Check Program. However, there are a few exceptions and they are as follows⁸⁴:

- *Exhaust Systems*: Repairs of a vehicle's exhaust system that are normally performed by muffler shops, provided the malfunction has been previously diagnosed by the Smog Check station originally authorized by the customer to perform repairs to the vehicle.
- *Defective Components*: Repairs of those individual components that have been previously diagnosed as being defective and that have been removed by the Smog Check station originally authorized by the customer to perform repairs to the vehicle.
- *Diesel-Powered Vehicles*: Repairs of diesel-powered vehicles, provided the Smog Check station has obtained authorization from the customer to sublet repairs to the vehicle.
- *Transmissions*: Repairs to a vehicle's transmission, provided the Smog Check station has obtained authorization from the customer to sublet repairs to the vehicle.
- *On-Board Computer System Software*: Corrections to the vehicle's on-board computer system software, provided that the malfunction has been previously diagnosed by the Smog Check station originally authorized by the customer to perform repairs to the vehicle.

Air Conditioning Equipment & Service Standards

Make sure that all of the technicians who work on motor vehicle air conditioning systems complete an Environmental Protection Agency (EPA) certified training and certification program like ComplyAuto. This is a lifetime certification as long as the technician can provide proof of certification.

Air conditioning systems need to be constantly checked for cracking, leaking, and loose connections. ARDs that perform or advertise air conditioning work or service must meet specific 1) equipment requirements, 2) work and service standards, and 3) invoice requirements.

Equipment Requirements⁸⁵

An ARD that is performing service or repair to a motor vehicle's air conditioning system, which involves evacuation or full or partial recharge of the air conditioning system, must have all repair, measuring, testing and refrigerant recovery equipment and current reference manuals necessary to service or repair the system, including but not limited to:

⁸⁴ 16 CCR § 3340.15(h)

⁸⁵ 16 CCR § 3351.6

- (a) Refrigerant identification equipment that meets or exceeds current Society of Automotive Engineers (S.A.E.) standard.
- (b) Refrigerant leak detection equipment that meets or exceeds current Society of Automotive Engineers.
- (c) Refrigerant recovery equipment that meets or exceeds current Society of Automotive Engineers (S.A.E.) standards.
- (d) Low- and high-pressure gauges for the purpose of measuring pressure in a mobile air conditioning system. As a minimum, the low-pressure gauge shall be capable of measuring from zero to thirty inches of vacuum Hg, and zero to 250 pounds of pressure per square inch (psi). As a minimum, the high-pressure gauge shall be capable of measuring from zero to 500 pounds of pressure per square inch (psi).
- (e) A functioning vacuum pump that is designed for the evacuation of mobile air conditioning systems.
- (f) A thermometer capable of testing air conditioning system efficiency. As a minimum, the thermometer shall be capable of measuring air temperatures from 20 to 100 degrees Fahrenheit.

Work and Service Standards

Any ARD that advertises or performs, directly or through a sublet automotive air conditioning work and uses the words “service,” “inspection,” “diagnosis,” “top off,” “performance check” or any expression or term of like meaning in any form of advertising or on a written estimate or invoice must include and perform all of the following procedures as part of that air conditioning work⁸⁶:

- (1) Exposed hoses, tubing and connections are examined for damage or leaks;
- (2) The compressor and clutch, when accessible, are examined for damage, missing bolts, missing hardware, broken housing and leaks;
- (3) The compressor is rotated to determine if it is seized or locked up;
- (4) Service ports are examined for missing caps, damaged threads and conformance with labeling;
- (5) The condenser coil is examined for damage, restrictions or leaks;
- (6) The expansion device, if accessible, is examined for physical damage or leaks;
- (7) The accumulator receiver dryer and in-line filter have been checked for damage, missing or loose hardware or leaks;
- (8) The drive belt system has been checked for damaged or missing pulleys or tensioners and for proper belt routing, tension, alignment, excessive wear or cracking;
- (9) The fan clutch has been examined for leakage, bearing wear and proper operation;
- (10) The cooling fan has been checked for bent or missing blades;

⁸⁶ 16 CCR § 3366

- (11) Accessible electrical connections have been examined for loose, burnt, broken or corroded parts;
- (12) The refrigerant in use has been identified and checked for contamination;
- (13) The system has been checked for leakage at a minimum of 50-PSI system pressure;
- (14) The compressor clutch, blower motor and air control doors have been checked for proper operation;
- (15) High and low side system operating pressures, as applicable, have been measured and recorded on the final invoice; and
- (16) The center air distribution outlet temperature has been measured and recorded on the final invoice.

Whenever the automotive air conditioning work being advertised or performed does not involve opening the refrigerant portion of the air conditioning system, refrigerant evacuation, or full or partial refrigerant recharge, the procedures specified in subsection above need be performed only to the extent required by accepted trade standards. For example, repairs involving just deodorization, electrical issues, and trim work do not normally need to conform to the procedures listed above.

Below is an example of a worksheet that technicians can complete when performing air conditioning services. Remember to provide a Unique Identifier to link the document with the repair order if using a document like this.

Air Conditioning Repair Checklist			
	OK	Attention on Req.	N/A
(1) Exposed hoses, tubing and connections are examined for damage or leaks			
(2) The compressor and clutch, when accessible, are examined for damage, missing bolts, missing hardware, broken housing and leaks			
(3) The compressor is rotated to determine if it is seized or locked up			
(4) Service ports are examined for missing caps, damaged threads and conformance with labeling			
(5) The condenser coil is examined for damage, restrictions or leaks			

(6) The expansion device, if accessible, is examined for physical damage or leaks			
(7) The accumulator receiver dryer and in-line filter have been checked for damage, missing or loose hardware or leaks			
(8) The drive belt system has been checked for damaged or missing pulleys or tensioners and for proper belt routing, tension, alignment, excessive wear or cracking			
(9) The fan clutch has been examined for leakage, bearing wear and proper operation			
(10) The cooling fan has been checked for bent or missing blades			
(11) Accessible electrical connections have been examined for loose, burnt, broken or corroded parts			
(12) The refrigerant in use has been identified and checked for contamination			
(13) The system has been checked for leakage at a minimum of 50-PSI system pressure			
(14) The compressor clutch, blower motor and air control doors have been checked for proper operation			
IMPORTANT: Items noted below need to be transferred to the final invoice. (15) High and low side system operating pressures, as applicable, have been measured: High _____ Low _____ (16) The center air distribution outlet temperature was measured at: _____ degrees Fahrenheit.			
Technician Name: _____ Technician Signature: _____ Date: _____ Repair Order Number: _____ STAPLE THIS FORM TO THE REPAIR ORDER.			

Invoice Requirements

As noted in Chapter 10: Specialized Invoices, in addition to all the information required in the invoice, an air conditioning service or repair must also include the high and low side system operating pressures and the center distribution outlet temperature⁸⁷.

Automotive Windshields

The simple windshield has advanced by leaps and bounds over these past few years. However, the requirements to notify the customer of specific hazards and risks after the installation still remain an imperative portion of the repair. An ARD performing windshield installations shall do the following⁸⁸:

- (1) Use windshields that meet or exceed Federal Motor Vehicle Safety Standards and vehicle manufacturer specifications;
- (2) Use windshield adhesives that meet or exceed vehicle manufacturer specifications. Adhesive systems shall be used in accordance with the adhesive manufacturer's specifications and adhesives shall be applied in accordance with vehicle manufacturer specifications;
- (3) Provide an estimate notifying the customer that installation of the windshield will prevent operation of the vehicle for a period of time and whether the windshield is an original equipment manufacturer part or a non-original equipment manufacturer part; and
- (4) Provide an invoice notifying the customer of the cure time, the date and time upon which the installation was completed, and whether the windshield is an original equipment manufacturer part or a non-original equipment manufacturer part.

⁸⁷ 16 CCR § 3366

⁸⁸ 16 CCR § 3365.1

Chapter 9: Preventative Maintenance

Overview

The BAR has taken issue with preventative maintenance repair services, specifically flushes or fluid exchanges, over the past few years because it was an area of concern. After receiving a relatively high volume of consumer complaints from customers pertaining to fluid exchanges, the BAR spent a year researching the fluid and flush services in the automotive industry standards and communicating with Dealers regarding their practices of offering fluid and flush services. It found that certain Dealers (including both service departments and independent repair facilities) were routinely recommending these services even when the customer's vehicle did not require them. For example, a Dealer would recommend a transmission fluid replacement on a customer's vehicle that had fewer than 10,000 miles that had no issues with the existing transmission fluid. Furthermore, the manufacturer did not recommend a transmission fluid replacement at this interval.

The BAR constantly reviews marketing and advertising pieces and disclosure practices to monitor preventative maintenance services in the automotive industry. We will discuss how to properly sell these specific kinds of maintenance services so as to not raise concerns by customers or the BAR.

Recommendation Based on Manufacturer Specifications

Every vehicle should have an owner's manual that has certain recommendations regarding maintenance intervals. If the BAR receives a customer complaint over an alleged improper fluid exchange, the first place that the BAR will research is the owner's manual to see whether or not the actual fluid exchange service is in line with the manufacturer's recommendations. If the vehicle's mileage is outside of the manufacturer's recommendations, the BAR will review the repair order to determine if the fluid exchange or flush service was necessary.

Recommendation Based on Other Factors or Experience

If the customer's preventative maintenance falls outside of the manufacturer's recommendations, there must be a valid basis as to why the service was performed.

If the Dealer is going to recommend a preventative maintenance service that is outside of the manufacturer's recommendation, the Dealer should observe the following:

- 1) the recommendation should clearly state that they are recommendations of the Dealer and not the manufacturer;

- 2) the recommendation does not conflict with the manufacturer recommendations or any technical service bulletins, such as recommending the customer have the transmission flushed when the manufacturer specifically prohibits or recommends against this service;
- 3) the Dealer can justify straying from the manufacturer's recommendations based upon individual diagnosis, specific Dealer experiences with the type of vehicle or driving conditions; and
- 4) this justification is properly documented as part of a service.

It is a best practice for the Dealer to have policies in place for fluid exchanges and flush services. Whenever a fluid exchange service is considered, Dealers should inquire about vehicle driving conditions, use, driving habits, vehicle maintenance, and history before making preventative maintenance recommendations.

In any event, the Dealer should never take any actions that can be viewed as misleading or deceptive. The last thing the Dealer wants is to defend a position that has no reasonable support. Performing a fluid exchange or flush service on a timeline that deviates from the manufacturer's schedule, without a reasonable explanation, may be viewed by the BAR as unnecessary and therefore, misleading or deceptive since the customer believed it was a necessary service.

BAR Guidance on Preventative Maintenance Services

Below is a copy of a letter by the BAR Chief regarding preventative maintenance service activity.

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September 10, 2013

RE: Bureau of Automotive Repair Outreach Efforts Regarding Preventative Maintenance Services

Dear Bureau Advisory Group Member,

The Bureau of Automotive Repair (Bureau) has spent the last year reviewing the marketing and disclosure practices for providing fluid and flush services in the automotive repair industry. After careful review of the practices and communications of automotive repair stations as well as conducting meetings and workshops with the manufacturers of vehicles and automotive fluids and chemical agents, the Bureau has decided not to pursue a new public awareness campaign at this time. Instead, the Bureau will ensure the materials we currently provide to consumers and the automotive industry contain useful information on fluid and flush services.

Background on Fluid and Flush Services

Automotive technology has improved significantly, and late model vehicles are lasting longer and require fewer repairs and maintenance. Due to these improvements, vehicle owners are saving on repair costs. However, owners that take their vehicle in for an oil change are commonly approached by repair facility personnel about performing other preventative maintenance services. The Bureau holds that manufacturer maintenance schedules should be a starting point for industry repair and service standards for fluid and flush services.

Any act or omission related to an automotive repair dealer conducting its business to maintain, repair, or service a motor vehicle falls under the provisions of Article 3 of the Automotive Repair Act (Act). This includes any preventative maintenance services, such as a fluid and flush services, that the automotive repair dealer may provide.

The fact of the matter is that vehicle manufacturers are experts on preventative maintenance and although they provide schedules for these services, most consumers are not certain if the services being recommended by their repair facility are required by the manufacturer at that point in time or if they will be of any benefit to them. Consumers rely on the repair facility for full disclosure when preventative maintenance services, such as automatic transmission, power steering unit, radiator, or brake system fluid exchanges or flushes, are being recommended.

Over the past few years, the Bureau has seen a significant increase in the marketing of fluid and flush products and services through the media and various social network sites. For this reason, the Bureau, whose highest priority is to protect the public, decided to conduct a review of the solicitation and sale of preventative maintenance services. The primary goal of this review was to research the history of automotive repair and to determine whether or not these services are being solicited and sold by repair facilities with full disclosure to their customers. In others words, are repair technicians being upfront about the need for, or benefits of, the services they are recommending and selling to consumers?

Industry Response

Our conversations with manufacturers, the repair industry and others have convinced us that we were successful in communicating our concerns about how some businesses were selling these products and services. We believe the industry heard our concerns and took them to heart, and that it has taken meaningful steps to ensure these services and products are sold in compliance with the Automotive Repair Act. As a result, the Bureau believes there is no need for additional outreach or regulations at this time.

The Bureau's Ongoing Efforts

Information about consumers' rights relative to automotive repair services, information on the complaint process, and the status on automotive repair dealer licenses will continue to be updated and disseminated to consumers through our public Web site, social network sites, media alerts, and other outreach materials, such as brochures and fact sheets.

The Bureau's bottom line message about preventative maintenance services is this:

Consumers: Your Owner's Manual was written by the manufacturer that built your vehicle. It contains the most accurate description of how to care for your vehicle. Take the time to look it over so you have an idea of what type of preventative maintenance services are recommended by the manufacturer and when they are due, what services are not recommended by the manufacturer, and those that may void any vehicle warranties.

If you are approached about having fluid or flush services done on your vehicle, ask the technician why the service is needed and if the service is recommended by the vehicle manufacturer at this time. All automotive repair dealers have access to required maintenance information on the vehicles they service or repair. If you are still unsure if the service is required or will be of any benefit to you, don't feel pressured to agree to those services until you do some research. If your Owner's Manual doesn't provide you with an answer, contact others knowledgeable in the industry before making a decision. In addition, keep good records of services done on your vehicle. These records will help you keep track of preventative maintenance that has already been performed and can assist you in making decisions in the future.

Automotive Repair Industry: BAR does not regulate the products or service you sell; we regulate how you sell them to your customers. Any preventative maintenance services provided to consumers must comply with the provisions of the Automotive Repair Act, so be familiar with your responsibilities as an Automotive Repair Dealer under the Act and its regulations. By maintaining compliance with the Act and by following the *Preventative Maintenance Services Best Practices* below, you will earn consumer trust, enjoy the business of repeat customers, and your automotive repair station will remain a proud leader in the industry.

Preventative Maintenance Services Best Practices

- Obtain customer authorization and inspect the vehicle before making service recommendations.
- Openly and honestly communicate with your customers.
- Ask customers about vehicle driving conditions and use.
- Ask customers about driving habits and vehicle maintenance and repair history.
- Communicate maintenance service recommendations made by the vehicle manufacturer.
- If recommending an accelerated maintenance service that deviates from the vehicle manufacturer, explain why.

The Bureau wishes to thank all those who participated in the discussions over the past year on this issue. We understand that our review took us into some interesting areas, such as chemical engineering, product development, equipment manufacturing, and other subjects. While the Bureau appreciated the opportunity to learn more about the these topics and their relationship to the automotive repair industry, we also recognize that our role, mandate, and mission lie solely within the repair processes set forth in the Automotive Repair Act.

We also recognize that many opinions and views were shared during our review of this issue and want to make it clear that the Bureau does not endorse nor disapprove of any specific products or services available in the marketplace today. For example, our research into brake fluid testing does not reflect BAR support of one technology over another. In many instances, it may be prudent for the automotive repair dealer to perform multiple types of testing to verify whether the brake fluid continues to meet U.S. Department of Transportation standards for which it was certified.

We appreciate your interest and patience in working with us through these issues. The Bureau looks forward to our continuing dialog with the automotive repair industry and other interested parties on areas of mutual interest affecting California consumers. Please know that it is our intent to communicate this message to the automotive repair industry in our next newsletter.

Sincerely,



PATRICK DORAIS, Acting Chief
Bureau of Automotive Repair

Chapter 10: Hazardous Waste Cost Recovery Program

Overview

With the passage of Senate Bill 158 (2021), the tiered hazardous waste generator fee was repealed and replaced with a new generation and handling (GH) fee on January 1, 2022. Administered by the California Department of Tax and Fee Administration (CDTFA), this fee is levied on Dealers at the rate of \$49.25 for each ton or fraction of a ton of hazardous waste generated for each generator site that generates an amount equal to or greater than five tons per calendar year⁸⁹. This rate changes beginning on July 1, 2023, but as of this writing, the rate remains the same. Additionally, every business must file the hazardous waste fees electronically⁹⁰.

Cost Recovery for Related Repair Services

The Dealer can recover the GH fee for handling, management, and disposal of hazardous waste directly from the customer for any related repair service⁹¹. If the Dealer routinely collects this fee for a repair service that creates hazardous waste – such as fluid exchange repairs (transmission fluid exchange or an oil change) or in an auto body repair service (paint or solvents) – the Dealer's initial estimate and invoice must have the facility's Hazardous Waste Identification Number, or more commonly known as the Dealer's EPA Number⁹². This number allows a registered hazardous waste transporter to lawfully transport its waste to a recycling facility.

Dealer Cannot Profit from GH Fee

The GH fee may not act as a source of profit for the Dealer and cannot be charged arbitrarily without a financial analysis of what the true cost is to the Dealer. The hazardous waste fee should be calculated for the Dealer by a third-party environmental health and safety (EHS) company. Depending on how much hazardous waste the facility generates per year, the EHS company determines a "per repair service" charge that can be passed on to the customer to offset the fees in which the Dealer must pay. This charge, and the EPA Number, must be separately itemized on both the initial estimate and the final invoice.

⁸⁹ Health & Safety Code § 25205.5(a)

⁹⁰ Rev. & Tax. Code § 43152.6(b)

⁹¹ 16 CCR § 3357

⁹² *Id.*

Calculating the Threshold

Though the threshold seems very high, it can easily be reached by a typical Dealer when we consider the various types of hazardous waste that is generated.

Hazardous Waste Types

The typical forms of hazardous waste that a Dealer generates through its service department include, but are not limited to, the following:

• Used Motor Oil* • Antifreeze and Coolant • Transmission Fluid • Brake Fluid • Power Steering Fluid • Contaminated Fuel	• Solvents • Degreasers • Paint and Related Waste • Used Rags or Absorbents • Electronic Waste • Waste Sent Outside CA for Disposal
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*Note that if you are crushing metal oil filters then you can dispose of them as scrap metal through your waste hauler per the Department of Toxic Substances Control. These filters will not be subject to this fee.

How Much is Five Tons?

To help illustrate how much five tons actually is we will need to do some visualization. One ton is equal to 2,000 pounds, so five tons is 10,000 pounds. Look at the table below that takes only into account used motor oil.

Item	Weight
1 Qt. Motor Oil	1.9 pounds
1 Gal. Motor Oil	7.6 pounds
10,000 Gal. Motor Oil	76,000 pounds
10,000 Gal. Motor Oil	38 tons
~263 Gal. Motor Oil	1 ton
~115 Gal. Motor Oil	5 tons
~460 Qt. Motor Oil	5 tons

If a typical motor vehicle has five quarts of oil, the Dealer only needs to perform ninety-two oil changes *per year* to meet the threshold of 5 tons of hazardous waste, or about eight oil changes *per month*.

Hire an EHS Consultant

As noted above, the GH fee may not act as a source of profit for the Dealer and cannot be charged arbitrarily without a financial analysis of what the true cost is to the Dealer. The GH fee should be calculated for the Dealer by a third-party environmental health and safety (EHS) company. To calculate this fee, they will usually contact your dedicated waste hauler(s) to determine the total tonnage and do a cost analysis on how the waste is stored at your facility and disposed of. Once this analysis is completed, the EHS company determines a "per repair service" charge that can be passed onto the customer to offset the fees which the Dealer must pay at the end of the year. This charge, and the EPA Number, must be separately itemized on both the initial estimate and the final invoice.

Chapter 11: Unusual Circumstances

Occasionally, a Dealer will take possession of a customer's vehicle and the customer is not immediately present when the vehicle is delivered to the Dealer⁹³. The Act calls this scenario "unusual circumstances" and contrary to popular belief, the Act still applies and requires the Dealer to make additional considerations to properly complete the repair service and return the vehicle. This situation arises most often in two situations: 1) when the customer drops off the vehicle outside of regular business hours, such as early-bird or night drop; and 2) when the vehicle is towed-in and unaccompanied by the customer.

Common Unusual Circumstances

Early Bird or Night Drop

In an effort to provide more flexibility to customers, Dealers are offering more ways for customers to deliver their vehicles to the Dealer outside of business hours. The two most popular options are an "early bird" drop off or "after hours" or "night drop" delivery. In an "early bird" situation, the customer can drop their vehicle off with the Dealer before it opens to have it serviced the same day. In a "night drop," the customer can drop their vehicle off with the Dealer after business hours to have the vehicle serviced the next day.

The Dealer generally provides a form to the customer that asks for basic information to identify the customer and the vehicle, such as the customer's name, address, and make and model of vehicle. Additionally, the Dealer may ask the customer what repair services should be completed on the vehicle.

It is imperative that the Dealer views these documents as only an intake form even if the customer provides handwritten instructions requesting what repairs are to be performed. Per the Act, the Dealer has not yet created and delivered an estimate to the customer and the customer has not yet provided the required authorization to complete the proposed repairs⁹⁴. Therefore, the Dealer must contact the customer, generate the estimate, and then document the applicable authorization – oral/verbal or electronic – before they can perform any repair service.

For an example of an intake form, see below:

AFTER-HOURS / EARLY BIRD DROP-OFF FORM

⁹³ 16 CCR § 3353.2

⁹⁴ 16 CCR § 3353.1

Date: _____ Customer Name: _____ Make / Model / Color / LP#: _____ / _____ / _____ / _____ Have you been here before? Y / N	
Briefly describe the vehicle issue:	_____ _____ _____ _____
By law, we need to provide you an estimate for the repair service. This is a contact form and no services will be performed until we receive your authorization.	Email: _____ Phone: (____) _____ - _____ Best time to call: ____ AM / PM Can we text you? Y / N _____ (Signature) I consent to being texted by the repair facility at the phone number above for the purposes of this repair service only. Data rates may apply. I agree to remove all personal items from the vehicle and release the Dealer from any liability thereof.
<u>INSTRUCTIONS:</u> Please place the vehicle key along with this form in the enclosed envelope and seal the envelope. Deposit the envelope into the designated drop box.	

Customer "Pre-Authorization"

Some Dealers have gotten into the habit of allowing the customer to "pre-authorize" the repair service before an estimate is properly created. Specifically, some "early bird" or "night drop" forms provide a space for the customer to identify an upper-limit on the cost of the services and a signature line. In essence, the customer is authorizing the Dealer to complete the requested repair service as long as the cost falls below this amount. If the estimate comes back more than this authorized cost then the Dealer is to contact the customer for further authorization.

Note that this is not a proper form of authorization under the Act. Any repairs completed under these circumstances will be seen as a violation and the Dealer will be penalized for performing unauthorized repairs. As noted earlier, the Dealer must contact the customer to receive and document proper authorization.

Customer Vehicle Towed-In

During a tow-in, a customer's vehicle is towed into the Dealer by a tow company and the customer is not present to provide any information for a potential repair service. The Dealer must

not perform any repairs on the customer's vehicle until it has contacted the customer, properly created an initial estimate, and received authorization to perform the repair service from the customer.

Additionally, the Dealer must document specific information to identify the tow company. The Dealer must record the following⁹⁵:

- 1) Name, address, and telephone number of the towing company;
- 2) Tow truck operator's name and driver's license number, ID number issued by a motor club, or other government authorized identifier;
- 3) Make, model, and license plate or VIN of the vehicle towed in; and
- 4) Date and time that possession was taken of the vehicle.

If the Dealer is unable to document this information from the tow truck operator, then it must document all reasonable efforts it took to obtain this information.

If the vehicle was dropped off after-hours by the tow truck and there was no one present to collect this identifying information, the Dealer must document when the vehicle was discovered and use reasonable efforts to retrieve this information from the tow-truck operator and tow truck company.

See below for an example of a towing information form. This should be completed whenever a vehicle is towed into the Dealer.

⁹⁵ Vehicle Code § 22513.1(a)

Towing Information Form

SECTION 1 - Towed vehicle information		
Make:	Model:	License Plate or VIN:

Check the box that best describes how you took possession of this vehicle from the tow truck operator:

- ☐ Physically received from the tow truck operator (**complete Section 2 & 4**)
☐ Discovered on property after being left by tow truck operator while business was closed to public (**complete Section 3 & 4**)

SECTION 2 – Vehicle received from tow truck

(A) Date and Time of Vehicle Possession: Date: _____ Time: _____

(B) Towing Company Information

Company Name:		Phone #:	
Address:	City:	State:	Zip:

(C) Tow Truck Operator Information

Name: _____

Identifying Information (*must complete one below*)

- ☐ Driver's License #: _____
☐ Motor club ID # (e.g., AAA): _____
☐ Other gov. issued ID: _____ ID Type: _____ ID#: _____
☐ None. I used reasonable efforts to document one of the identification numbers above, but the tow truck operator refused to provide the information.

SECTION 3 – Vehicle discovered on property

(A) Date and time vehicle first observed on property: Date: _____ Time: _____

- ☐ Information identifying the towing company was **NOT** left with the vehicle (**do not complete Part B and C**)
☐ Information identifying the towing company was left with the vehicle and I took reasonable efforts to contact the company and obtain the information below (**complete Part B and C**)

(B) Towing Company Information

Company Name:		Phone #:	
Address:	City:	State:	Zip:

(C) Tow Truck Operator Information

Name: _____

Identifying Information (*must complete one below*)

- ☐ Driver's License #: _____
☐ Motor club ID # (e.g., AAA): _____
☐ Other gov. issued ID: _____ ID Type: _____ ID#: _____
☐ None. I used reasonable efforts to document one of the identification numbers above, but the tow truck operator refused to provide the information.

SECTION 4 – Employee signature

Employee Name: _____ Employee Signature: _____

Date: _____

COPY OF THIS FORM TO BE PLACED WITH REPAIR ORDER

Once the information of the tow truck operator and the tow company is documented, the Dealer still must contact the customer to obtain authorization. Per the Act, the Dealer has not yet created and delivered an estimate to the customer and the customer has not yet provided the Dealer authorization to complete the proposed repairs⁹⁶. Therefore, the Dealer must contact the customer, generate the estimate, and then document the applicable authorization – oral/verbal or electronic – before they can perform any repair service.

Charging for Towing and Storage

Generally, a Dealer does not charge the customer for towing or storage during these unusual circumstances, but there are instances where a Dealer will charge the customer these fees especially if the vehicle is towed in and left at the Dealer for a substantial amount of time.

⁹⁶ 16 CCR § 3353.1

Chapter 12: Vehicle Repair Liens

Repairs and Liens Overview

Vehicle repair liens provide financial protection to Dealers in situations where a customer fails to pay for the repairs. If specific requirements are met, the Dealer may legally sell the customer's vehicle, obtain reimbursement from lien sale proceeds, and return any remaining difference to the customer. However, there are very specific timelines and requirements that a Dealer must take to perfect the lien and recover monies for repairs, otherwise the lien may be extinguished and lost.

Mechanic's Lien Laws

A lien is a right to keep possession of property belonging to another person until a debt owed by that person is discharged. California has long guaranteed the right for mechanics and other laborers to have a lien on the property upon which they have labored or furnished material towards. Adopted in 1879, Article XIV, Section 3 of the California Constitution states:

"Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens."

The legislature subsequently enacted procedures for the enforcement of those liens, including those pertaining to vehicles⁹⁷. Those provisions confer the right to a lien, dependent upon possession, for compensation to which the person is legally entitled to, subject to certain limitations and procedures for the sale of the vehicle subject to the liens.

California law allows a Dealer to have a lien⁹⁸. The law specifically states:

"Every person has a lien dependent upon possession for the compensation to which the person is legally entitled for making repairs or performing labor upon, and furnishing supplies or materials for, and for the storage, repair, or safekeeping of, and for the rental of parking space for, any vehicle of a type subject to registration under the Vehicle Code, subject to the limitations set forth in this chapter."

When the Lien Arises

A lien may arise in two specific instances: immediately upon receiving the vehicle (e.g., the vehicle was abandoned and left with the Dealer) and when the Dealer has completed the repairs and is seeking to recoup the costs associated with the repair service.

⁹⁷ Civil Code § 3067 et seq.

⁹⁸ Civil Code § 3068

Vehicle Abandoned on Property

Known as “storage” or “tow” liens, these liens can arise when the Dealer takes possession of the vehicle for towing and storage purposes even without the Dealer performing repairs! This lien arises on the date the Dealer takes possession of the vehicle⁹⁹. Charges may be imposed on a full calendar day basis for each day, or part thereof, that the vehicle was in storage.

Completed Repairs Awaiting Payment

Distinct from a storage lien, a “mechanic’s lien” arises at the time a written statement of charges for completed work or services (e.g., an invoice) is either presented to the customer or fifteen (15) days after the work or services are completed, whichever occurs first.

Timing of Liens

The Dealer must take immediate action to perfect the lien otherwise the lien will be extinguished and lost. The Dealer must file the appropriate forms with the Department of Motor Vehicles (DMV) to conduct a lien sale or file an action in court within 30 days after the lien has arisen¹⁰⁰. To ensure proper timeliness, Dealers should work with a reputable lien processor or competent legal counsel to perfect their lien rights.

Lien Sale

A “lien sale” is the sale of a customer’s vehicle to satisfy any unpaid repair services or storage debt owed to the Dealer. After the DMV receives the request for authorization for the lien sale, the DMV will notify the registered owner, legal owners (e.g. financial institutions), and all the interested parties of the lien. The Dealer must wait for authorization from the DMV before it can proceed with the lien sale process, which usually takes 30 to 40 days. The cost of processing the lien sale cannot exceed \$70 for a vehicle with a value of less than \$4,000 and cannot exceed \$100 for a vehicle with a value exceeding \$4,000¹⁰¹.

Any party having an interest in the vehicle may declare an opposition to the lien sale and the DMV will notify the Dealer, thus halting the lien sale. If this occurs, the Dealer must then secure the lien by commencing legal proceedings within 30 days of the opposition letter (also known as the denial).

⁹⁹ Civil Code § 3068.1

¹⁰⁰ Civil Code § 3068(b)(1)

¹⁰¹ Civil Code §§ 3073, 3074

Extinguished Lien

The lien sale process can be extinguished, and no lien sale will be conducted, unless either occurs:

- 1) the Dealer applies for an authorization from the DMV to conduct a lien sale within 30 days after the lien has arisen; or
- 2) an action in court is filed within 30 days after the lien is filed.

A lien is also extinguished and no lien sale is conducted if:¹⁰²

- 1) the Dealer refuses to allow inspection of the vehicle or refuses to provide a copy of the work order; or
- 2) the Dealer refuses to provide an invoice reflecting the services or repairs performed on the vehicle to the customer or the legal owner.

This is why it is *crucial* to have all of the proper documentation in place on every repair service. You never know when you'll have a delinquent customer and Dealers should put themselves in the best possible position to recover their costs and properly document every repair service.

If the lien is extinguished then the Dealer must turn over possession of the vehicle to the legal owner and seek remedies as an unsecured creditor. Failure to release the vehicle where the lien is extinguished can result in the Dealer being subject to a lawsuit by the legal owner.

Lien Recovery Limits from Legal Owners

A legal owner is the person or entity holding a security interest in a vehicle or the lessor of the vehicle (e.g. the financing or leasing company). If a customer fails to pay for vehicle repairs and the legal owner steps in to repossess the vehicle, specified legal limits are placed on the Dealer which may hinder the Dealer's recovery of all monies owed for repair services.

There are specific legal limits as to how much the Dealer can recover from the legal owner for the release of the vehicle. The limits are as follows:

\$1,500 for the repair; and either:

- \$1,025 for any storage or safekeeping for the vehicle; or
- \$1,250 for storage or safekeeping if an application for an authorization to conduct a lien sale has been filed.

¹⁰² Civil Code § 3068(b)(4)

If repair work is already completed, the Dealer is prohibited from dismantling, disengaging, removing or stripping from the vehicle the parts used to complete the work or services¹⁰³.

In any action brought by the legal owner to recover a vehicle that is alleged to be wrongfully withheld by the Dealer claiming a lien, the prevailing party will be entitled to reasonable attorney's fees and costs not to exceed \$1,750¹⁰⁴.

Unless repairs have been authorized by the legal owner, the law provides that the legal owner is only required to pay up to the required limits as noted above. These limits can cause serious monetary losses for the Dealer especially if they are for expensive repairs such as engine, transmission or auto body repairs. Although challenging, the Dealer can seek to obtain authorization from the legal owner prior to performing these high-value repairs. Otherwise, the Dealer may be required to release the vehicle without being fully compensated for service work.

If obtaining authorization from the legal owner is difficult and time consuming, the Dealer should consider requesting a deposit from the customer to cover a substantial portion of the estimated cost for high value repair work prior to commencing work.

Other Lien Laws and Regulations

Who Can Perform a Lien Sale?

The Dealer must have a valid registration with the BAR to be able to perform a lien sale or sue on a contract for automotive repairs¹⁰⁵.

Storage Liens versus Mechanic's Liens

A lien can also arise when a Dealer takes possession of a vehicle for towing and storage purposes prior to performing any contracted repairs. Here, the Dealer wants to recoup costs associated with the storage of the vehicle. In this situation, the Dealer will have a storage lien rather than a mechanic's lien. Dealers should make sure that they are filing the correct lien to the DMV or else it will be rejected. Applying to the DMV for authorization to conduct a lien sale depends on the value of the vehicle.¹⁰⁶

¹⁰³ Civil Code § 3068(a)

¹⁰⁴ Civil Code § 3068(d)

¹⁰⁵ Bus. & Prof. Code § 9884.16

¹⁰⁶ Civil Code § 3068.1

Chapter 13: License and Registration Requirements

Licenses and Registration Requirements

All licenses and registrations must be valid and current at all times while the Dealer is conducting business. The licenses and registration documents must be posted in a conspicuous place and manner. This means that these documents should be posted in an area where they can be easily viewed by members of the general public.

Licenses and registrations must be placed under glass or other transparent cover and prominently displayed in an area that is frequented by customers and can be easily viewed. Dealers will want to make sure that these licenses and registrations have not fallen down within these transparent coverings. Areas that consumers frequent, such as customer waiting rooms and areas near the cashier, have a higher probability that they will be seen and acknowledged. Placing licenses and registrations in employee restricted areas, such as break rooms, managers offices or other areas that are off limits to consumers, is not acceptable¹⁰⁷. Be sure to check them periodically to make sure that no licenses have fallen or otherwise not viewable to the public.

Types of Licenses and Registrations

The following is a list of licenses and registrations that are most commonly found in the service department (if applicable). Each license or registration has its own expiration date, so it is imperative that Dealers routinely check that they are current. They are as follows:

- BAR Automotive Repair Dealer Registration
- Smog Check Station License
- Smog Inspector License
- Smog Repair Technician License
- Lamp Station License (until September 27, 2024)
- Lamp Adjuster License (until September 27, 2024)
- Brake Station License (until September 27, 2024)
- Brake Adjuster license (until September 27, 2024)
- Vehicle Safety System Inspector License (Replaces prior lamp and brake licenses)
- Board of Equalization Seller's Permit - Resale Number
- Fire Department Permit
- Business License - City or County
- EPA Number

¹⁰⁷ 16 CCR §§ 3307(a), (b)

- Air Quality Management District Permit
- Fictitious Business Name Statement: dba
- Tire Program ID Number Certificate
- Certified Unified Program Agency Permit
- Air Conditioning 609 Technician Certification*

*The air conditioning technician certification only needs to be on premises, not displayed.

Chapter 14: BAR Cite and Fine Program

On July 1, 2023, the BAR implemented new regulations governing citations, fines, and remedial training. Under the new program, BAR is able to issue citations and fines to Dealers for violations of the Act with fines potentially reaching up to \$5,000 per citation¹⁰⁸. In determining the severity of the citation or whether or not one is even necessary, the BAR takes a very holistic approach and makes its decision based on a multitude of factors. There is also a formal appeals process available to the Dealer and a voluntary course the Dealer can enroll in to avoid paying some fines.

Determining Factors

The BAR considers nine different factors in determining whether to issue a citation and whether to issue a fine, and if so, how much the fine should be¹⁰⁹.

- *Nature and Gravity of the Violation.* The BAR assesses the type of violation that has occurred. The more serious the threat to consumer safety, the more likely BAR will find aggravating conduct as a factor for levying a citation.
- *History of Violations.* Much like many other enforcement actions, BAR considers the Dealer's past violations and frequency of such incidents to help determine intent.
- *The Good or Bad Faith of Dealer, including Prior Training.* The BAR evaluates whether the violation was committed in good or bad faith. To help in this evaluation, the BAR looks for any past voluntary training in the relevant subject matter the Dealer may have completed. If training has been completed, it may weigh in favor of finding "good faith" on the part of the Dealer. Meaning, the Dealer more than likely knew the proper way to document the repair service, but failed unintentionally. Conversely, inadequate training (or a lack thereof) may show "bad faith" or a lack of interest/disregard toward compliance, influencing the determination of a fine or citation.
- *Failure to Perform Work for which Money was Received.* If a customer paid for service or repair work, the BAR will consider the payment as persuasive evidence that the customer and the Dealer agreed that the Dealer would perform the repair service for the equal to the amount the customer already paid.
- *Restitution to Consumers or Attempt to Mitigate any Damage Caused by the Violation.* BAR assesses whether the Dealer made restitution to the consumer (e.g. a refund on parts and labor or even a free service to correct the error) and whether the Dealer mitigated the damage or injury that they caused by the violation.

¹⁰⁸ Bus. & Prof. Code § 125.9

¹⁰⁹ 16 CCR § 3394.51

- *Violation was a Willful or Inadvertent Error.* BAR weighs whether the Dealer's conduct was intentional or inadvertent. Again, a formalized history of voluntary training can be used to evaluate this factor.
- *Negligence in the Vehicle's Maintenance.* BAR evaluates the degree of negligence, if any, in maintaining, caring for, or repairing the affected motor vehicle. The BAR will look to OEM recommendations and other related national publications.
- *Responsibility of Dealers.* BAR investigates the involvement of owners, directors, officers, partners, members, trustees, or responsible managing employee(s) in the violation.
- *Cooperation with BAR's Investigation.* BAR considers the extent to which the Dealer has cooperated in and demonstrated good faith during the BAR's investigation.

Appeals Process

Dealers who receive a citation have the option to appeal the citation and fine through a remote informal conference review process conducted by a three-member panel composed of one representative each from the BAR, the public, and the automotive repair industry¹¹⁰. In order for the appeal process to occur, the Dealer must submit a written request for an informal citation conference within thirty (30) days after service of the citation. Within ninety (90) days of request, the three-member panel will hold a conference with the cited person and hear the facts and allegations specified in the citation. The panel will make a recommendation to the BAR Chief by a majority vote whether to affirm, modify or dismiss the citation, including any fine to be levied¹¹¹.

Remedial 8-hour Training

Dealers cited for violations that are considered minor in nature have the option to complete a BAR-certified remedial 8-hour training course. This course must be instructed by a BAR-certified remedial training provider provided that the Dealer has not taken remedial training in the prior 18-month period from the effective date of citation¹¹². By completing the remedial training course, the Dealer will be able to prevent the BAR's public disclosure of the citation on the internet¹¹³.

The remedial training must include, at a minimum, instruction on automotive repair dealer compliance with laws and regulations relating to all of the following areas¹¹⁴:

- Estimates Requirements
- Customer Authorization
- Invoice Requirements

¹¹⁰ 16 CCR §§ 3394.55, 3394.54

¹¹¹ 16 CCR § 3394.53

¹¹² Bus. & Prof. Code § 9882(a)(2)(B)(ii); 16 CCR § 3394.55

¹¹³ 16 CCR § 3394.55

¹¹⁴ 16 CCR § 3394.7

- Accepted Trade Standards
- Sublet Repair
- Return of Parts
- Advertising Requirements
- Guarantees and Warranties
- Maintenance of Records

Chapter 15: Posting and Signage Requirements

The BAR and other state agencies require that Dealers post certain signs for the general public's benefit. Each sign must be posted in a conspicuous place and manner. Below are some of the signs that must be posted by the Dealer.

BAR Sign

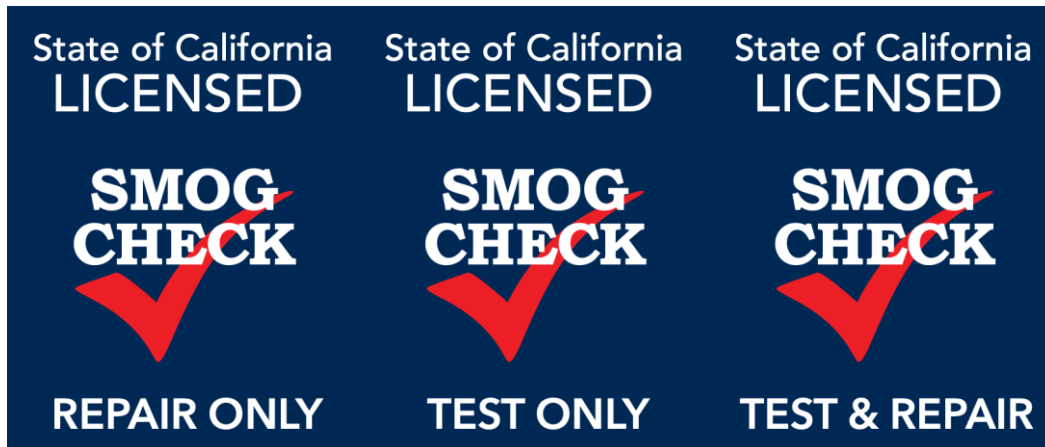
The BAR requires that all Dealers post this sign at the facility. The sign must contain specific language and meet specific formatting requirements. The Dealer can check the BAR website for the latest version of the Dealer sign. Below is an example:



Source: Bureau of Automotive Repair; <https://www.bar.ca.gov/industry/licensee-signs>; accessed on June 25, 2024.

Smog Check Station Sign

There are three classifications of smog check stations: Test Only, Test and Repair, and Repair-Only. A licensed smog station must display the corresponding sign in a conspicuous manner that is easily viewed by the general public. Below are some examples:



Source: Bureau of Automotive Repair; <https://www.bar.ca.gov/industry/licensee-signs>; accessed on June 25, 2024.

Smog Check Price List Sign

Smog check stations must post a list of reasonable prices for the specific activities and repairs for which they are licensed. The posted prices must include the prices charged by the station for re-inspection. Prices for vans and/or heavy-duty type vehicles must also be listed if they differ from the prices for passenger cars. The hourly rate must be posted if the station imposes an hourly labor rate charge for repairs. The price to issue a certificate of compliance or noncompliance charged by the BAR must be posted separately from the price of the inspection and of the reinspection, if any¹¹⁵. Below is an example:

SMOG CHECK PROGRAM PRICES	
Service	Light Duty Vehicles
INSPECTION CARS	\$_____
INSPECTION PICKUPS	\$_____

¹¹⁵ 16 CCR § 3340.15(d)

INSPECTION VANS	\$_____
INSPECTION RV's	\$_____
INSPECTION TRUCKS	\$_____
PRE-INSPECTION	\$_____
RE-INSPECTION	\$_____
CERTIFICATE	\$_____
LABOR RATE (Per Hour)	\$_____

Consumer Assistance Program – Notice to Motorists Sign

The BAR offers repair assistance and retirement options to consumers whose vehicles fail a smog check. The Consumer Assistance Program's (CAP) repair assistance option offers eligible consumers whose vehicles fail a biennial smog check inspection financial assistance toward emissions-related repairs at a STAR test-and-repair station. The CAP's vehicle retirement option offers eligible consumers an incentive to retire their operational vehicle.

The BAR requires that smog check stations post a "Notice to Motorists" sign regarding these services for vehicle owners who wish to participate in the repair assistance service. This sign should be posted in a location that will alert customers to this program before the smog check service is complete¹¹⁶. Below is an example:

¹¹⁶ Health and Safety Code § 44017

DEPARTMENT OF CONSUMER AFFAIRS

NOTICE TO CONSUMERS

The Consumer Assistance Program can help if your vehicle fails a Smog Check.

Repair Assistance
Receive financial assistance with emissions repairs. Eligibility is based on income.

Vehicle Retirement
Receive a financial incentive to retire your vehicle, even if it passes a Smog Check.

Learn more at **www.bar.ca.gov** or call (866) 272-9642.

Consumers may be eligible for a one-time repair cost waiver to register their vehicle. Repairs must be completed prior to the vehicle's next Smog Check. For more information about the repair cost waiver, visit www.asktheref.org.

Protect your vehicle—ask the station about etching and other options to help deter catalytic converter theft.



STATE OF CALIFORNIA

DEPARTMENT OF CONSUMER AFFAIRS

Towing Fees and Access Notice Sign

If a Dealer charges customers for towing and storage (except for storage unrelated to a tow, such as after a repair service is completed), the facility must post a Towing Fees and Access Notice in the office area in plain view of the public and have copies readily available to the public upon request¹¹⁷.

The Towing Fees and Access Notice sign explains the vehicle owner's rights and responsibilities if the owner's vehicle is towed. Dealers that do not provide towing services, such as those who arrange for or take possession of vehicles from third party towing companies, are not required to post the sign, but must provide a copy of the notice upon request. See below for an example:

Towing and Storage Fees and Access Notice
Note: The following information is intended to serve as a general summary of some of the laws that provide vehicle owners certain rights when their vehicle is towed. It is not intended to summarize all of the laws that may be applicable nor is it intended to fully and completely state the entire law in any area listed. Please review the applicable California code for a definitive statement of the law in your particular situation. <u>How much can a towing company charge?</u>

¹¹⁷ Vehicle Code § 22651.07

Rates for public tows and storage are generally established by an agreement between the law enforcement agency requesting the tow and the towing company (to confirm the approved rates, you may contact the law enforcement agency that initiated the tow; additionally, these rates are required to be posted at the storage facility).

Rates for private property tows and storage cannot exceed the approved rates for the law enforcement agency that has primary jurisdiction for the property from which the vehicle was removed or the towing company's approved CHP rate.

Rates for owner's request tows and storage are generally established by mutual agreement between the requestor and the towing company, but may be dictated by agreements established between the requestor's motor club and motor club service provider.

Where can you complain about a towing company?

For public tows: Contact the law enforcement agency initiating the tow.

Your rights if your vehicle is towed:

Generally, prior to paying any towing and storage-related fees you have the right to:

- Receive an itemized invoice of actual charges
- Receive your personal property, at no charge, during normal business hours
- Retrieve your vehicle during the first 72 hours of storage and not pay a lien fee.
- Request a copy of the Towing and Storage Fees and Access Notice
- Pay by cash, valid bank credit card, or a check issued by your insurer.
- Inspect your vehicle.
- Have your insurer inspect your vehicle at the storage facility, at no charge, during normal business hours. However, the storage facility may limit the inspection to increments of 45 consecutive minutes in order to provide service to any other waiting customer, after which the insurer may resume the inspection for additional increments of 45 consecutive minutes, as necessary

You and your insurance company or the insurance company representative have the right to have the vehicle released immediately upon (1) payment of all towing and storage-related fees, (2) presentation of a valid photo identification, (3) presentation of reliable documentation showing that you are the owner, insured, or insurer of the vehicle or that the owner has authorized you to take possession of the vehicle, and (4), if applicable, in the case of a fatality or crime, presentation of any required police or law enforcement release documents.

Prior to your vehicle being repaired:

- You have the right to choose the repair facility and to have no repairs made to your vehicle unless you authorize them in writing.
- Any authorization you sign for towing and any authorization you sign for repair must be on separate forms.

What if I do not pay the towing and storage-related fees or abandon my vehicle at the towing company?

Pursuant to Sections 3068.1 to 3074, inclusive, of the Civil Code, a towing company may sell your vehicle and any moneys received will be applied to towing and storage-related fees that have accumulated against your vehicle.

You are responsible for paying the towing company any outstanding balance due on any of these fees once the sale is complete.

Who is liable if my vehicle was damaged during towing or storage?

Generally the owner of a vehicle may recover for any damage to the vehicle resulting from any intentional or negligent act of a person causing the removal of, or removing, the vehicle.

What happens if a towing company violates the law?

If a tow company does not satisfactorily meet certain requirements detailed in this notice, you may bring a lawsuit in court, generally in small claims court. The tower may be civilly liable for damages up to two times the amount charged, not to exceed \$500, and possibly more for certain violations.

Proposition 65 Sign

Proposition 65 requires the State to publish a list of chemicals known to cause cancer or other reproductive toxicity. Businesses are required to notify customers about significant amounts of chemicals in the products they purchase, or chemicals that are present in an affected area, prior to potential exposure to these chemicals by affixing warning signs that are prominently and conspicuously placed¹¹⁸.

Proposition 65 warning language specific to automotive repair facilities must be posted at each public entrance to the repair facility and printed no smaller than 32-point type and be enclosed in a box. See an example of the sign below¹¹⁹:

WARNING: Breathing the air in this area or skin contact with petroleum products can expose you

¹¹⁸ 27 CCR § 25604.1

¹¹⁹ 27 CCR § 25607.27(b)

1  chemicals including benzene, motor vehicle exhaust, and carbon monoxide, which are known to the State of California to cause cancer and birth defects or other reproductive harm. Do not stay in this area longer than necessary. For more information go to www.P65Warnings.ca.gov/vehicle-repair.

As a reminder, a different Proposition 65 Sign (complete with different language) will be needed depending on the circumstances and the location in which the sign is placed. For example, the Proposition 65 sign placed in the repair facility will be different from the sign that is located in the service department's showroom (shown above), which is different from the sign that is located near the food area.

Battery Fee & Refundable Deposit Sign

The Lead-Acid Battery Recycling Act of 2016 requires Dealers that sell lead-acid batteries to register with the California Department of Tax and Fee Administration and charge customers a \$2.00 California Battery Fee and a refundable deposit whenever batteries are sold at retail¹²⁰.

Dealers that collect the California Battery Fee and deposit must post a sign "that is clearly visible in the public sales area" containing the specific language. Alternatively, this language could be printed on invoices¹²¹. See below for an example:

This dealer is required by law to charge a nonrefundable \$2 California battery fee and a refundable deposit for each lead-acid battery purchased.

 A credit of the same amount as the refundable deposit will be issued if a used lead-acid battery is returned at the time of purchase or up to 45 days later along with this dealer's receipt.

Other Signs

¹²⁰ Health and Safety Code § 25215 *et seq.*

¹²¹ Health and Safety Code § 25215.2(c)

Below are examples of other common signs found throughout an automotive repair facility.

- Vehicle Daily Storage Sign: This sign is not required by law, but it is deemed a best practice. This sign is separate from the Towing and Fees and Access Notice.
- Video Recording Sign: This sign indicates that the premises is being monitored/video taped. Note that if the Dealer is recording audio, the Dealer must receive the customer's prior written consent.
- Nitrogen Inflation Sign: This sign usually states that a regular air inflation system is not available. This is a best practice for applicable Dealers¹²².
- Americans with Disabilities Act - ADA Signs: These signs signify that there are accessible entrances, bathrooms, sales counters, etc.
- Gender-Neutral Restroom Signs (if applicable): These signs are for single occupancy restrooms for employees and/or customers.

¹²² 17 CCR § 95550

Chapter 16: Records Retention

Record Retention Overview

The Act specifically defines how long records should be kept by the Dealer. These records include the entire repair order that outlines the entire repair service, from the multi-point inspection sheet to the revised estimate to the final invoice.

Content of Records

All records maintained by the Dealer must be true and accurate and cannot deceive a customer or the general public¹²³. Said in another way, records cannot be manipulated by adding or removing documentation as to change the narrative of the repair service. The service records must be kept up-to-date and accurate at all times.

Length of Retention

The Dealer must maintain for at least three (3) years from the date they were originally created, in written or electronic form, legible copies of the following: (i) all invoices, (ii) estimates (including all records created to obtain customer authorization, such as emails and texts), and (iii) all work orders (including all records supplementing the work order created to obtain additional authorization from the customer)¹²⁴. However, due to the four-year statute of limitations for a breach of contract, where a consumer can take civil action against a Dealer, it is recommended that Dealers maintain records for at least four (4) years.

Specific Records to Maintain

If storing these records electronically, remember to scan both sides of every document as well as the customer's signature.

Estimate Records

All estimates pertaining to the work performed must be documented. This also includes all of the records created to obtain the authorization from the customer for the initial estimate¹²⁵.

¹²³ 16 CCR § 3373

¹²⁴ Bus. & Prof. Code § 9884.11; 16 CCR § 3358(a)

¹²⁵ 16 CCR § 3358(b)

Work Order Records

All the work orders and/or contracts for repairs, parts and labor, including all records supplementing the work order must be kept as well. This also includes the documents created to obtain additional authorization from the customer for any additional repairs estimated¹²⁶.

Invoice Records

All invoices relating to the automotive repair must be maintained by the Dealer. This includes all other invoices received from other third party facilities for parts and/or labor¹²⁷. For example, if the Dealer had to place a special order for a part that was not in stock from a specific third party for a repair service, that invoice between the Dealer and the third party should be maintained per the same record retention period.

Records Must be Available for Inspection

All records maintained by the Dealer must be open for reasonable inspection and/or reproduction by the BAR or other law enforcement officials during normal business hours¹²⁸. Whether the Dealer stores records physically or electronically, be sure that they are readily accessible if requested by the BAR.

The term "reasonable" has been a point of contention by the BAR and Dealers if the records are not readily accessible or cannot be obtained within a specific time period. If you cannot produce the required records immediately, work with the BAR to determine what is feasible given your circumstances.

Unique Identifier

All records associated with an individual transaction must have a unique identifier linking the records to that specific transaction¹²⁹. This is typically a repair order number and must be on all documents including those provided by a third party vendor such as a parts supplier.

Smog Check Station Records

¹²⁶ 16 CCR § 3358(c)

¹²⁷ 16 CCR § 3358(a)

¹²⁸ 16 CCR § 3358(d)

¹²⁹ 16 CCR § 3358(e)

Smog check stations must keep meticulous records of every service that it completes. Not only must smog check stations keep records for three (3) years, but the records must include the following information¹³⁰:

- 1) All certificates of compliance and certificates of noncompliance in stock and/or issued;
- 2) Repair orders relating to the inspection and repair activities; and
- 3) Vehicle inspection reports generated either manually or by the emissions inspection system.

The documents identified above should be all kept together so as to facilitate access to those records by the BAR. The second copy of an issued certificate shall be attached to the final invoice.

¹³⁰ 16 CCR §§ 3340.15(e)(1)-(3)