**CAR REPAIR LIENS VERSUS OWNER PROTECTION**

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Due to perceived abuses in the motor vehicle repair industry, Florida’s legislature adopted a statute establishing a framework for customer rights. The legislature adopted the Florida Motor Vehicle Repair Act in 1980. The Act applies to motor vehicle repair shops, with a few exclusions such as those operated by a governmental entity or solely repairing agricultural related vehicles. If the repair shop does not follow the rules, repairs can be free.

The Act requires a motor vehicle repair shop provide a written repair estimate to the customer when any repair work will exceed $100. The estimate must include (a) name, address and telephone number of the repair shop, (b) name, address and telephone number of the customer, (c) date and time of the repair estimate, (d) year, make, model, odometer reading and license plate number of the vehicle, (e) proposed work completion date, (f) a general description of the problem or request for repair, (g) a statement as to whether the charge will be flat rate or hourly or both (h) any charge for shop supplies or waste removal and a statement that the charge represents costs and profits to the repair facility, (i) charge for making a repair estimate and if the charge cannot be predetermined, the basis on which the charge will be calculated, (j) the customer’s intended method of payment, (k) name and telephone number of another person who may authorize repair work if the customer wants to designate a person, (l) a statement indicating any guarantee, if any, (m) a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and (n) a statement indicating daily charge for storing the vehicle after the customer has been notified the repair is complete, but no storage charge can accrue for a period of 3 working days from date of such notification.

If the repair work will exceed $100, the shop must give the customer a written notice disclosing the customer’s right to a written estimate but the notice also allows the customer to waive the written estimate. If the customer waives the written estimate, information that would have been in the estimate need not be provided. If the customer leaves a motor vehicle at a shop when the shop is not open, there is an implied partial waiver of the written estimate but after diagnostic work necessary to estimate cost of repair is completed, the shop must notify the customer. That notice may be by telephone. The shop cannot mandate waiver.

One issue in this statutory framework is its effort to accommodate a repair shop’s need to get approval for repairs when a customer is not on site. The statute is clearly based on a pre-smart phone world, as it overlooks the ability of most customers to communicate via text and often email via their phone. If the customer has not waived an estimate and the repair shop determines that the actual cost of repair will exceed the estimate by more than $10 or 10%, whichever is greater (but not to exceed $50), the shop must promptly notify the customer by telephone, telegraph, mail or other means of the additional repair work and the estimated cost. The customer then has a right to authorize, modify or cancel the order.

If the customer cancels the order, the shop must expeditiously reassemble the vehicle unless the customer waives reassembly or reassembling of vehicle would be unsafe. The shop can charge for the cost of tear down, parts and labor to replace items that were destroyed by tear down, and the cost of reassembly. That places the customer in somewhat of a disadvantage but is intended to make the repair shop whole if the customer changes the customer’s mind after hearing the estimated cost of repairs. When the customer hears the cost of parts needed to replace those damaged and what it will cost to reassembly, the customer decides to continue with repair.

If a repair shop does not follow the statutory mandates, the customer can sue for damages, court costs and attorney fees. The repair shop is allowed to counterclaim for the reasonable cost of the repairs. If the consumer prevails, the consumer gets free repairs and may even get attorney’s fees. The consumer can also get additional damages such as the cost of a rental vehicle or other damage that would have generally be expected if the repair shop fails to follow the statute.

The legislature has adopted statutory protections for the repair shop as well. Repair shops have a lien on vehicle they work on. The lien is for the repair bill and cost of storage, but if the cost of storage is not included in the written estimate it cannot be recovered. Notice of the lien must be sent to the owner by registered or certified mail within 7 business days after storage charges begin to accrue. The notice must include the amount due and many other details. Perhaps the most important detail is notice of a proposed sale date, which may be no less than 60 days after completion of the work

If the repair shop omits notice of a sale date in the notice of lien, it can still sell the vehicle but must give the owner at least 15 days prior to sale date. Notice of the sale must also be published in the newspaper at least 15 days prior to sale.

Some owners attempt to avoid payment by taking the vehicle with a spare key or stopping payment on a check. Both of these actions are criminal acts subject to a fine of up to $500 or imprisonment for up to 3 months. If the vehicle owner feels the shop has violated the Act or is otherwise not entitled to the payment it claims, the owner can post a bond with the Clerk of Courts. The bond is equal to the total repair costs invoiced plus storage charges, if any, less any payment made by the vehicle owner. The clerk issues a certificate giving notice of the bond and directing immediate release of the vehicle.

If the shop refuses to release the vehicle, the vehicle owner can sue for damages, court costs and attorney fees. The shop owner must file suit to recover against the bond within 60 days or the clerk discharges the bond. That does not release the vehicle owner from possible liability to the shop, but means there is no longer a bond from which the shop owner will be paid if successful in court. If the shop owner timey files suit to recover against the bond, the prevailing party in that suit can also get attorney fees and costs.

The benefit of posting bond is immediate release of the vehicle. Some cannot afford a bond and others do not want to pay for one. With or without a bond, the vehicle owner may also file a demand for hearing with the court. The hearing must he held before the proposed date of sale. At hearing, the court determines if the vehicle is subject to a valid lien, amount of the lien and priority of the lien against others holding a security interest in the vehicle. The court can also award damages, attorney fees and court costs and order the immediate payment from or release of the bond.

Motor vehicle repair shops and vehicle owners both have rights created and protected by statute. In most cases, the shop is in better position since it deals with and should be familiar with the statutes. But, if the consumer follows the statutes, the statutes provide powerful protection.

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