



**House
Legislative
Analysis
Section**

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**REGULATE APPLIANCE SERVICE
DEALERS**

**House Bill 5833 (Substitute H-5)
First Analysis (9-24-96)**

**Sponsor: Rep. Lynn Bankes
Committee: Regulatory Affairs**

THE APPARENT PROBLEM:

Though the majority of people who repair appliances such as stoves, refrigerators, washers, and dryers are reputable, stories abound across the state of customers being overcharged for repairs or having unnecessary repairs done. Unlike other service industries, the home appliance repair business does not have a formal industry association; therefore, there is no self-policing within the industry. In addition, the state cannot enforce fair business practices through license sanctions because generally those performing appliance repairs are not licensed by the state (the exception being licensed mechanical contractors who repair air conditioners and refrigeration units).

Some people believe that available remedies, such as suits filed in small claims court or the protections provided under the Michigan Consumer Protection Act (MCL 445.901 et al.), are sufficient to allow disgruntled customers or the attorney general to bring civil actions against disreputable repair people. Others argue that the lack of legal requirements as to certain information being recorded on the final bill and the use of written estimates makes it more difficult for a customer to pursue a lawsuit or even to obtain a second opinion. Unlike the auto repair industry, many appliance repair people do not itemize the final bill as to what amount of the charge is for replacement parts and what is for labor charges. Reportedly, persons have been charged several hundred dollars with only a brief explanation on the bill of what was done, such as "replaced defrost timer." Plus, the parts removed or replaced are usually kept by the repair person. Without a detailed breakdown of replacement parts used and the cost for labor, it is impossible for a customer to seek second opinions on the repair, or even to verify that he or she has been overcharged for the repair. And, without the so-called "bad" part, a consumer cannot have the part checked out to see if it did indeed need to be replaced.

In response to the concerns of constituents, legislation has been initiated to require those repairing home appliances to conform to certain regulations concerning information provided on written estimates and final bills and

clarifying the existence of warranties on parts and labor, and to provide additional civil remedies.

THE CONTENT OF THE BILL:

The bill would create a new act to regulate appliance service dealers, who would be defined as those repairing, servicing, or maintaining appliances for compensation. (The bill would exclude contractors licensed under the Forbes Mechanical Contractors Act, MCL 338.971 to 338.988, from the definition of service dealer.) Under the bill, an "appliance" would mean a refrigerator, dehumidifier, freezer, oven, range, microwave oven, washer, dryer, dishwasher, trash compactor, room air conditioner, or other similar device normally used or sold for personal, family, or household use. The bill would establish regulations for, among other things, written estimates, warranties, penalties for violations of the bill, and civil actions by consumers and the Michigan attorney general.

Under the bill, a "customer" would be defined as a member of the general public who sought the services of a service dealer for the repair, maintenance, or service of an appliance that was not used as part of a business or commercial enterprise. All parts removed from an appliance would have to be returned to the customer. However, a repair person could keep parts that had a core charge, exchange rate, or that contained hazardous material as long as the customer was provided with a written statement on the final bill describing the reason the part was not returned. In addition, service and repair records would have to be kept by the dealer for one year. Copies would have to be provided to customers upon request and payment of a reasonable copy charge.

Written estimates. Before repairing, maintaining, or servicing an appliance, a service dealer would have to make a written estimate of the cost of the repair, service or maintenance. A customer would have to approve the estimate by signing it, giving verbal approval over the telephone, or any other equivalent method. Approvals made by telephone or other methods would have to be

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noted on the estimate and if possible, a signature would have to be obtained later. A dealer would be prohibited from charging more than 110 percent of the estimated amount unless he or she had obtained the oral or written permission of the customer.

An estimate would have to provide the following:

*The service dealer's name, mailing address, and telephone number. If the mailing address was not a street address, then the mailing address or the street address of the service dealer's owner would have to be given.

*A description of the problem or the maintenance procedure desired by the customer.

*The charges for labor and parts, each stated separately. The method by which the labor charge is determined would have to be listed.

*The bill would permit a repair person to charge a reasonable fee for any labor performed in examining the appliance and diagnosing any problems. If the appliance had to be dismantled in order to diagnose the problem, the written estimate would have to include the cost of dismantling and reassembling the appliance as well as the cost of any parts that would be destroyed or rendered inoperable by the procedure.

*The cost of removing and returning the appliance from and to the customer's premises.

*A description of the method of computing the labor charge and the estimated time of completing the repair or service.

The bill would not prohibit a service dealer from charging for service calls.

Warranties. The bill would require repair persons to give warranties on both labor and parts. The warranty on labor would have to be 30 days, and the warranty on parts would have to be not less than the time period warranted by the manufacturer. Provisions in the bill would not void, reduce, or supersede a service contract or manufacturer's warranty. If a customer notified a service dealer in writing within the warranty period, the dealer would have to correct the initial repair without charge. This subsequent repair would have to be made within 10 days of notification by the customer unless any needed parts were not received in time. The dealer would have to record the date the parts were ordered. A service dealer would be permitted to charge a labor charge for any subsequent repairs that were after the 30-day labor warranty provided by the bill.

A warranty could be honored by reimbursing the customer for the service or repairs. Warranties would be extended by any period of time that the dealer had possession of the appliance to do work covered by the warranty. Warranties would exclude damage caused by abuse, negligence, theft, vandalism, fire, or other casualty loss.

Final bill. Any warranty by the supplier of a part would have to be listed on the final bill. If the existence of a warranty was not known by the repair person, he or she would have to record that on the bill, too. Also, the final bill would have to state in writing the following:

*The name and address of the service dealer as described for the estimate.

*Service call charges.

*Labor charges.

*Labor warranty.

*Parts charge, whether the parts were new or used, and the actual part number and manufacturer.

*Other charges, stated in detail.

*Sales tax.

*A statement that in order to enforce any warranty provided by the bill, the customer would have to notify the service dealer in writing not later than the time period of the warranty for the part or labor.

Penalties. The following would be prohibited and subject to civil actions:

*Making a false promise that would be likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of an appliance.

*Providing services in an incompetent or negligent manner.

*Failing to comply with the bill's requirements in a material respect.

Remedies. The bill would allow a person to bring a civil suit against a service dealer for damages or to enforce the bill's provisions. The court could award twice the amount of damages if it found that the violation had been willful. A person could also seek relief through an injunction to require the repair person to comply with the bill's requirements, and could receive attorney fees if successful in obtaining the injunction. In addition to

damages, the court could award attorney fees to the person who prevailed in the lawsuit, whether it was the defendant or the plaintiff.

In addition, the bill would not prohibit the attorney general, a prosecuting attorney, or a person who had suffered a loss as a result of a violation of the bill from bringing an action under provisions of the Michigan Consumer Protection Act (MCL 445.901 to 445.922) for any act or omission of the bill's provisions. Further, remedies under the bill would be cumulative and independent; the bill would specify that a person or the Department of Attorney General could use more than one remedy to seek relief.

The bill would take effect July 1, 1997.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, actions brought pursuant to the Michigan Consumer Protection Act would generate an indeterminate amount of revenue in the form of civil penalties. Article VIII section 9 of the Constitution of Michigan of 1963 specifies that fines assessed and collected at the local level are to be distributed to the support of public libraries and county law libraries as prescribed by law. (9-18-96)

ARGUMENTS:

For:

The field of appliance repair is in need of additional consumer protection. Currently, estimates and approvals for repairs are usually given orally, final bills typically do not break down what part of the charge is for labor and what is for replacement parts, and replaced parts are often kept by the repair person. Customers are not always told if there is a warranty on parts or labor, and warranties can differ from business to business. By specifying the type of information to be recorded on written estimates and final bills, it will be easier for consumers to get second opinions on potentially expensive repairs and also to verify if they have been overcharged or had unnecessary repairs done. Reportedly, many customers are discouraged from bringing a lawsuit against a repair person or business because they lack sufficient information to prove they have been overcharged or that the appliance was improperly repaired. The bill would therefore enable a consumer to have a better idea if there are sufficient grounds to file a lawsuit against the repair person, and to substantiate their case. The bill's provision to permit a court to award attorney fees to the prevailing party should decrease the possibility of frivolous lawsuits. Though the attorney general has succeeded in putting some disreputable appliance repair shops out of business and

consumers have brought suits under the Michigan Consumer Protection Act or in small claims court, this bill would give additional legal options to help the attorney general and consumers to weed out the "bad apples" that often prey on the elderly and poor, while protecting those repair people who do provide their customers with reliable and trustworthy service.

Against:

Far from weeding out "bad apples," the bill would serve only to increase the paperwork for the honest and reputable appliance repair people. Reportedly, most repair people, after diagnosing the problem, give the estimate for the repair orally. Often, a key has been left for the repair person, and so no one is home to give an estimate to. Many repair people report that customers who are not at home for the service call often do not leave a telephone number where they can be reached. In addition, just diagnosing the problem is not always a clear indicator of the time needed to complete the repair. For instance, bolts are often stripped or corroded and can be very time consuming to remove, but would not be apparent until the work was underway. If the repair person had to have a written estimate signed or have oral confirmation given, many would have to make unnecessary second trips to a customer's home, or repeated calls to the customer if the repair were going to take longer than estimated, all at additional expense to the customer. Also, the time needed to write up the estimate and contact a customer by phone if a number had been provided would add up to increased billing costs to the customer. Further, industry members report that having to break down the charges relative to parts and labor would disclose information of certain trade secrets. Apparently it is an accepted practice to combine parts and labor for certain items. For instance, replacing a certain bolt or small piece may be charged at \$1, which would include both the price of the bolt and the labor charge for putting it in.

Since the majority of repair persons are reputable, and since most already provide the customer with the majority of the information required under the bill, the bill is seen as unnecessary. The consumer already has recourse under existing law to act against those who provide shoddy services or charge customers excessively. Additionally, the consumer needs to bear greater responsibility in getting reliable referrals to reputable service dealers. The bill is merely intrusive and would serve to increase costs to consumers.

Response:

The requirement to obtain confirmation of an estimate before undergoing repairs is not overly onerous - it is a similar procedure to what is required for car repairs. And as is the case with car repairs, if the original estimate needs to be adjusted, service people should be

able to make a follow-up call to the customer without too much trouble.

Against:

The bill as introduced provided many more protections for consumers than the committee version. The committee substitute's provision for the prevailing party to be awarded attorney fees would severely discourage customers from seeking relief through the courts. The repairs represented in this bill would typically range from less than a hundred dollars to several hundred dollars. A person faced with hundreds or thousands of dollars of attorney fees would most likely not persevere in bringing a suit against a repair person for shoddy or incompetent service for a repair that was \$100 or \$200. Therefore, the bill would do little to encourage the type of consumer response that would indeed force disreputable repair people out of business.

POSITIONS:

The Air Conditioning Contractors of America (AACA) and Sheet Metal and Air Conditioning Contractors of America (SMACNA) support the bill. (9-18-96)

The Michigan Consumer Federation supports the major goal of the bill, but feels the bill needs further amending to strengthen the enforcement and penalties section. (9-20-96)

The National Federation of Independent Business opposes the bill. (9-20-96)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.