

This rule was filed as 1 NMAC 2.6.

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 2 CONSUMER PROTECTION
PART 6 REQUIREMENTS FOR REPAIR OF VEHICLES

12.2.6.1 ISSUING AGENCY: Office of the New Mexico Attorney General, Consumer Protection Division, Post Office Drawer 1508, Santa Fe, New Mexico 87504.
[1/1/98; Recompiled 10/15/01]

12.2.6.2 SCOPE: Automotive repair shops and automotive repair facilities.
[1/1/98; Recompiled 10/15/01]

12.2.6.3 STATUTORY AUTHORITY: New Mexico Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq.
[1/1/98; Recompiled 10/15/01]

12.2.6.4 DURATION: Permanent.
[1/1/98; Recompiled 10/15/01]

12.2.6.5 EFFECTIVE DATE: January 1, 1998, unless a later date is cited at the end of a section or paragraph.
[1/1/98; Recompiled 10/15/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.2.6.6 OBJECTIVE: The purpose is to accomplish three principal objectives:

- A. to deter unfair business practices within the automotive industry;
- B. to provide clear legal standards for the automotive repair industry in order to facilitate industry compliance, clearly establish a set of rights and responsibilities for both consumers and automotive repair facilities and make evaluation of existing practices easier; and
- C. to make sure the genuine public interest is served in the encouragement of industry self-regulation when available government resources are too few to permit substantial government oversight of the industry.

[1/1/98; Recompiled 10/15/01]

12.2.6.7 DEFINITIONS:

- A. As used in these regulations, the terms "automotive repair shop" and "repair facility" are interchangeable and mean any business or operation engaged in automotive repair or automotive service (including, but not limited to, tune-up, oil change, window tinting, collision repair or refinishing and installation of new or used automotive parts and/or accessories).
- B. As used in these regulations, "automobile" shall mean every vehicle which is self-propelled and subject to registration under the Motor Vehicle Code.
- C. As used in these regulations, "diagnostic" or "trouble shooting fee" shall mean a fee charged for the purpose of determining the nature, extent and source of the need for repair.
- D. As used in these regulations, "sublet" shall mean work performed by a business or person other than the automotive repair shop charging the customer for the work unless the other business is owned by or in common ownership with the shop.

[1/1/98; Recompiled 10/15/01]

12.2.6.8 STATEMENT OF BASIS:

- A. The attorney general has long been concerned about unfair and deceptive practices in the automotive repair industry. The attorney general's consumer protection division has received numerous complaints and telephone calls alleging unfair and deceptive trade practices in the automotive repair industry.
- B. The complaints include, but are not limited to, the absence of a warranty on completed repairs, price gouging, automotive part misrepresentation, failure to give written estimates, failure to adhere to estimates,

failure to disclose labor rates, unauthorized repairs and the imposition of liens for unauthorized repairs. The consumer protection division has also received requests and complaints from industry members regarding the necessity of a statement clearly defining their rights and responsibilities.

C. These regulations provide some basic rules in a complicated industry. They are not exhaustive and do not cover every practice and procedure involved in automotive repair. Therefore, it is not intended that literal compliance with these regulations be an absolute protection against liability for practices and procedures surrounding automotive repair.

[1/1/98; Recompiled 10/15/01]

12.2.6.9 WARRANTIES, RATES AND RETURNS:

A. It is an unfair or deceptive trade practice for an automotive repair shop to fail to post the major provisions of its warranty policy in a prominent and conspicuous location within the repair facility and to fail to provide any person who has purchased automotive repair services with a written warranty or statement that there is no warranty, if such is the case.

B. It is an unfair or deceptive trade practice for an automotive repair facility to fail to make available to all customers upon request the details of its warranty and return policies.

C. It is an unfair or deceptive practice for an automotive repair facility to fail to post the current method by which labor charges are calculated, including any dollar figures used, at a prominent and conspicuous location within the facility or on the customer invoice or estimate.

[1/1/98; Recompiled 10/15/01]

12.2.6.10 ESTIMATES, INVOICE AND PAYMENT:

A. It is an unfair or deceptive trade practice for an automotive repair facility to fail to give an estimate of repairs that exceed one hundred dollars (\$100). A written estimate from an insurance company or independent appraisal firm shall be deemed to meet this requirement in lieu of the repair facility estimate. For calculation of the dollar amount, fees for related repairs diagnosed at the same time shall be aggregated. A diagnostic fee is not subject to this section as long as the disclosure required by Section 11.1 [now Section 12.2.6.11 NMAC] is made at the time an estimate would have been required. The estimate shall be written. If the customer is not present at the time the estimate is finalized, the repair facility may obtain oral approval from the customer or proceed, based upon full disclosure of the content of the written estimate. If oral approval is obtained, the repair facility shall provide the customer with a copy of the written estimate no later than the time the customer picks up his or her vehicle. The estimate shall document who authorized the repairs, the phone numbers at which they were contacted, exactly what repairs were authorized and the time, date and name of the person obtaining the authorization. If the repairs exceed the estimate by the greater of ten percent or fifty dollars (\$50), the shop must obtain a new authorization for any repairs beyond 110 percent or (\$50) of the original estimate. If the additional repairs are authorized and paid for by an insurance company, no customer authorization is necessary. If the consumer does not desire an estimate, the consumer may choose to sign a waiver relieving the facility of these responsibilities and requirements when he or she initially leaves the automobile for repair. However, a consumer must be made fully aware of the consequences of his or her waiver, which shall include a brief explanation of the privileges he or she has waived.

B. It is an unfair or deceptive trade practice for an automotive repair facility to solicit, collect or require payment for repair charges in excess of those permitted by Section 10.1 [now Subsection A of 12.2.6.10 NMAC].

C. It is an unfair or deceptive trade practice for an automotive repair facility to fail to provide the customer with an invoice stating in detail all repairs completed and, pursuant to Section 12.1 [now Subsection A of Section 12.2.6.12 NMAC], all parts and material used in the repair or service of the customer's automobile; provided that no itemization is required if the charge for parts and materials is (\$50) or less. Furthermore, if any repair is sublet, the sublet repairs shall be marked "sublet" on the customer's invoice.

D. It is an unfair or deceptive trade practice for an automobile repair shop to assert or impose or attempt to assert or impose a mechanic's lien for charges in excess of those permitted by Section 10.1 [now Subsection A of 12.2.6.10 NMAC].

[1/1/98; Recompiled 10/15/01]

12.2.6.11 FEES: It is an unfair or deceptive trade practice for an automotive repair facility to fail to disclose the basis for calculating a trouble shooting or diagnostic fee.

[1/1/98; Recompiled 10/15/01]

12.2.6.12 PARTS:

A. It is an unfair or deceptive trade practice for an automotive repair facility or insurance company to fail to disclose (if known) whether particular parts used in the repair of the customer's automobile were used or rebuilt or aftermarket crash parts. If a facility or insurance company fails to disclose such information regarding the condition of the parts used in the repair or service, it will be assumed that the parts installed were new, and they shall be warranted as such.

B. All repair facilities shall keep the parts for customer inspection. Customers may retain the parts if they so desire, unless the specific manufacturer requires that the part be returned or if the part is hazardous to the environment. If the customer desires removed parts that involve a core, the customer will be responsible for the core charge. A repair facility shall not be required to keep parts if disposal or special handling is required by law. A repair facility shall not be required to keep parts after a vehicle has been released to the customer.

[1/1/98; Recompiled 10/15/01]

12.2.6.13 SUBSTANTIAL COMPLIANCE: A procedure or requirement is in substantial compliance with these regulations if, taking all relevant circumstances into account, the purpose of the procedure or requirement in the regulations is met, regardless of whether or not the technical requirements of the regulations are met.

[1/1/98; Recompiled 10/15/01]

12.2.6.14 SELF-REGULATION PROGRAMS:

A. The attorney general may refer to an approved self-regulation program any complaint alleging a violation of these regulations by an automotive repair shop participating in the program. Not more than forty-five (45) days of receiving a complaint by referral from the attorney general, the program shall provide the attorney general with a written report describing the substance of the complaint and the program's disposition of the complaint.

B. At a minimum, an approved self-regulation program shall include:

- (1) substantive standards determined by the attorney general to be in substantial compliance with the standards set forth in these regulations; and
- (2) an enforcement procedure that the attorney general determines to be fair and impartial, responsive to complaints and likely to enforce compliance with the program's substantive standards.

C. Not less than every twelve (12) months, or more frequently if required by the attorney general, the program shall submit a written report to the attorney general containing the following information:

- (1) copies of all complaints received by the program; and
- (2) the number of complaints against each auto repair facility; and
- (3) the disposition of each complaint; and
- (4) the number of complaints received by type of complaint; and
- (5) any other information or documents requested by the attorney general.

D. All records of the program shall be available for inspection and copying by the attorney general upon request during normal business hours.

E. All proceedings of the program concerning consumer complaints shall be open to the public.

F. The attorney general may withdraw approval of a program at any time upon a finding by the attorney general that the program has failed to comply with the requirements of these regulations, or the program, while complying, has failed to effectively and meaningfully regulate the practices of the automotive repair shops participating in the program.

[1/1/98; Recompiled 10/15/01]

12.2.6.15 ENFORCEMENT: A violation of these regulations is a violation of the Unfair Practices Act.

[1/1/98; Recompiled 10/15/01]

12.2.6.16 SEVERABILITY: If any portion of these regulations is held invalid, the remainder of the regulations and applications thereof shall remain unaffected.

[1/1/98; Recompiled 10/15/01]

Date: _____

Tom Udall
Attorney General

HISTORY OF 12.2.6 NMAC: [RESERVED]