

**AUTOMOTIVE REPAIRS
CONSUMER REMEDIES FOR UNAUTHORIZED WORK**

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A recent decision by the Wisconsin Court of Appeals, District II, in Kaskin v. John Lynch Chevrolet-Pontiac Sales, Inc., has been widely discussed in the media and has generated many questions from shops engaged in automotive repairs. In this case, the customer alleged that the dealership performed repairs to his vehicle without authorization. When the customer brought the vehicle in for repair, both he and the dealership believed that the repair would be covered by factory warranty and the initial authorization was for the dealership to proceed on the basis there would be no charge to the customer. Upon diagnosing the problem, the dealership found that bad fuel had ruined the fuel injectors which was not covered by the warranty. The dealership repaired the problem, but would not release the vehicle to the customer until the repair was paid.¹

The customer then sued the dealership under Wisconsin's unfair trade practices law which provides that anyone suffering pecuniary loss as the result of a violation can recover "twice the amount of such pecuniary loss." The dealership argued that even if the repairs were unauthorized, the customer had not suffered any "pecuniary loss" as the vehicle had been repaired and the customer received the value of the repair. The trial court agreed with the dealership and dismissed the claim and the customer appealed.

In its decision reversing the trial court's dismissal of the action, the Court of Appeals determined that Wisconsin's consumer protection laws provide customers with a "right of informed consent" before repairs are made. The Court went on to hold that if a customer is deprived of this right of informed consent, his or her pecuniary losses include the full amount of the costs of the unauthorized repairs. The value of the unauthorized repairs to the customer is not considered.

In reaching this decision, the Court did not overturn a prior case, Huff & Morse, Inc. v. Riordan, in which the Court found that a repair shop could recover the reasonable value of repairs from a customer even though the shop had violated Wisconsin's Motor Vehicle Repair Rule (ATCP 132, Wis. Adm. Code) by not giving the customer a written estimate before proceeding with repairs. The difference in Huff & Morse was that the customer admitted orally authorizing repairs although the authorization failed to comply with Wisconsin Code.

Contrary to the impression given in some press reports, the Kaskin case did not change any requirements of Wisconsin's Motor Vehicle Repair Rule. ATCP 132 provides:

No shop may perform any repair that has not been authorized by the customer. Before a shop starts any repairs whose total price may exceed \$50, a shop representative shall record the repair authorization on a written repair order under s. ATCP 132.03.

¹ There is a dispute whether the customer authorized the non-warranty repairs and this issue has been remanded back to the trial court for determination.

Under the rule, the content of a written repair order, including price information, is set forth in detail and the customer is required to sign and be given a copy of the order prior to commencement of repairs unless there is no "face to face contact" with the customer at the time of authorization. If authorization is by telephone or other means, the shop is required to provide a description of the repairs along with a good faith estimate of the repair price. The shop in such cases must record: 1) the date and time of such authorization; 2) the name of the person providing the authorization; 3) a description of the work authorized; 4) the total price estimate; and 5) the estimated completion date.²

The bottom line is that the Kaskin decision does not change the requirements repair shops must meet under Wisconsin's Motor Vehicle Repair Rule. Those basic requirements have been in place for over thirty years. What the Kaskin case does do is clarify the remedies available to customers when unauthorized repairs are performed. The burden of proof is on repair shops to show what was authorized and how much was authorized in any dispute. If the shop cannot show authorization, the customer is not required to pay.

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² A complete copy of ATCP 132 can be accessed by going to boardmanlawfirm.com where it is attached to this article found in our "Reading Room."

Chapter ATCP 132

MOTOR VEHICLE REPAIR

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Note: Chapter Ag 132 was renumbered chapter ATCP 132 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448; Chapter ATCP 132 as it existed on December 31, 1994 was repealed and a new chapter ATCP 132 was created effective January 1, 1995.

Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6), 100.26 (3) or 100.26 (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys fees.

ATCP 132.01 Definitions. As used in this chapter:

- (1) "Accessory" means an item, such as a radio, audio system component or cellular communications device, that is designed to be attached to a motor vehicle and that is attached by cutting, drilling, fastening with screws or bolts, establishing electrical connections, or intruding into any existing component, part or system in a motor vehicle.
- (2) "Customer" means a natural person, corporation or business entity that owns, operates or controls a motor vehicle that is the subject of a repair transaction. "Customer" includes a person who is authorized to act on the customer's behalf, or who acts on the customer's behalf with the customer's apparent authorization. "Customer" does not include a shop subcontracting a repair to another shop.
- (3) "Department" means the State of Wisconsin department of agriculture, trade and consumer protection.
- (4) "Estimate" means either of the following, but does not include a firm price quotation under s. ATCP 132.04 (3):
 - (a) An oral or written repair price estimate that a shop representative gives to a customer, including any estimate required under s. ATCP 132.04 (4), 132.06 (1) (a) or (2).
 - (b) The price specified by the customer under estimate alternative number 2, as shown in s. ATCP 132.04 (2).
- (5) "Estimated completion date" means the estimated repair completion date under s. ATCP 132.05 or, if no estimated completion date is provided under s. ATCP 132.05, the date on which the motor vehicle, component, part or accessory is delivered to the shop for repair.
- (6) "Firm price quotation" means a firm written price quotation under s. ATCP 132.04 (3).
- (7) "Motor vehicle" means any motor vehicle as defined in s. 340.01 (35), Stats., and any motor home as defined in s. 340.01 (33m), Stats., which is required to be registered with the state of Wisconsin department of transportation under ch. 341, Stats., or with an equivalent agency of another state, but does not include any vehicle, except a motor home, whose manufacturer's specified gross vehicle weight rating exceeds 16,000 lbs.
- (8) "Repair" means any of the repair tasks identified under sub. (12), but does not include any of the following:
 - (a) Repair tasks that a shop performs on its own motor vehicle, or that a motor vehicle dealer performs in order to prepare a new or used motor vehicle for sale by the dealer.
 - (b) Repair tasks that the sole proprietor of a shop performs on a family member's motor vehicle.

- (c) Towing a motor vehicle.
- (d) Supplying motor fuel to a motor vehicle.
- (e) Washing or waxing the exterior surface of a motor vehicle, unless the washing and waxing is performed in conjunction with another repair task under sub. (12).
- (f) Cleaning the passenger compartment of a motor vehicle, unless the cleaning is performed in conjunction with another repair task under sub. (12).
- (9) "Repair invoice" or "invoice" means a written repair invoice under s. ATCP 132.08.
- (10) "Repair order" means a written repair order under s. ATCP 132.03.
- (11) "Repair price" means the price that a shop charges to a customer for a repair, exclusive of sales tax.
- (12) "Repair task" includes any of the following:
 - (a) The diagnosis of any defect or malfunction in a motor vehicle, or in a motor vehicle component, part or attached accessory.
 - (b) The installation or removal of any motor vehicle component, part or accessory.
 - (c) The improvement, adjustment, replacement, maintenance or servicing of any motor vehicle component or part, regardless of whether that component or part is attached to a motor vehicle at the time of repair.
 - (d) The improvement, adjustment, replacement, maintenance or servicing of any accessory that is attached to a motor vehicle at the time of repair.
 - (e) Tasks related to the preparation of a repair estimate or firm price quotation if the shop charges for preparing the repair estimate or firm price quotation.
- (13) "Shop" means any natural person, corporation, partnership, or other business association or entity engaged in the motor vehicle repair business, and includes all owners, officers, employees and agents of the shop. "Shop" does not include a shop that repairs motor vehicles only for a single business or governmental entity, or for 2 or more entities that are subject to common control.
- (14) "Shop representative" means a person whom the shop has authorized to do both of the following, or who does both of the following with apparent authority from the shop:
 - (a) Accept custody of a motor vehicle from a customer.
 - (b) Obtain a repair authorization from a customer.

History: Cr. Register, January, 1994, No. 457, eff. 1-1-95.

ATCP 132.02 Repair authorization. No shop may perform any repair that has not been authorized by the customer. Before a shop starts any repairs whose total price may exceed \$50, a shop representative shall record the repair authorization on a written repair order under s. ATCP 132.03.

Note: Customer authorization is required for all repairs, including repairs under \$50 and repairs on vehicles brought to the shop without face-to-face contact between the customer and a shop representative. Authorization may be given in person or by telephone, or by any other form of communication between the customer and the shop. Authorization to perform a general repair implies authorization to perform the specific repairs that are normally included in that general repair. Merely reporting a

problem or malfunction does not, by itself, constitute authorization to repair the problem or malfunction.

History: Cr. Register, January, 1994, No. 457, eff. 1-1-95.

ATCP 132.03 Written repair order. (1) REQUIREMENT. Before a shop starts any repairs whose total price may exceed \$50.00, a shop representative shall prepare a written repair order that clearly and legibly describes the repairs authorized by the customer. The repair order shall be dated and signed by the shop representative, and shall include all of the information required under sub. (3).

(2) CUSTOMER COPY. Before a shop starts any repairs whose total price may exceed \$50, a shop representative shall provide the customer with a complete and accurate copy of the repair order under sub. (1) for those repairs, except that a customer copy is not required if there was no face-to-face contact between the customer and a shop representative when the repairs were authorized.

(3) REPAIR ORDER CONTENTS. A repair order under sub. (1) shall include all of the following:

- (a) The name and address of the shop.
- (b) The name and address of the customer.
- (c) The model, make and license number of the motor vehicle if the motor vehicle is in the shop's possession.
- (d) The repair price information required under s. ATCP 132.04, if any.
- (e) The estimated date by which the repair will be completed, if an estimated completion date is required under s. ATCP 132.05.
- (f) Notice that customer is entitled to inspect or receive any components, parts or accessories replaced or removed by the shop.
- (g) A description of the repairs authorized by the customer.
- (h) The date the repair order is written.
- (i) The signature of a shop representative.

History: Cr. Register, January, 1994, No. 457, eff. 1-1-95.

ATCP 132.04 Repair price information. (1) ESTIMATE ALTERNATIVES OR FIRM PRICE QUOTATION; SHOP'S CHOICE. Before a shop starts any repairs whose total price may exceed \$50, a shop representative shall provide the customer with a written statement of estimate alternatives under sub. (2) or a firm price quotation under sub. (3). This requirement does not apply if there has been no face-to-face contact between the customer and a shop representative.

(2) STATEMENT OF ESTIMATE ALTERNATIVES. (a) A statement of estimate alternatives, if provided, shall be conspicuously printed in the following form, either on the repair order or on a separate document attached to the repair order:

“YOU ARE ENTITLED TO A PRICE ESTIMATE FOR THE REPAIRS YOU HAVE AUTHORIZED. THE REPAIR PRICE MAY BE LESS THAN THE ESTIMATE, BUT WILL NOT EXCEED THE ESTIMATE WITHOUT YOUR PERMISSION. YOUR SIGNATURE WILL INDICATE YOUR ESTIMATE SELECTION.

1. I request an estimate in writing before you begin repairs.

2. Please proceed with repairs, but call me before continuing if the price will exceed \$ _____.

3. I do not want an estimate.

(b) If the statement of estimate alternatives under par. (a) is printed on a separate document, rather than on the repair order, the separate document shall include the repair order number or other information which uniquely identifies the authorization with the

repair order. The shop shall keep a copy of the signed authorization with its records.

(3) FIRM PRICE QUOTATION. (a) A firm price quotation, if provided, shall be written on the repair order and shall be accompanied by the following conspicuous statement on the repair order: **“THIS PRICE FOR THE AUTHORIZED REPAIRS WILL NOT BE EXCEEDED IF THE MOTOR VEHICLE IS DELIVERED TO THE SHOP WITHIN 5 DAYS.”**

(b) A shop may not exceed the firm price quoted under par. (a) for the specified repairs to the vehicle, component, part or accessory, if the customer delivers that motor vehicle, component, part or accessory to the shop within 5 days after the date on which the firm price is quoted.

(c) Notwithstanding sub. (4), a shop is not required to give a customer an estimate for repairs if the shop gives the customer a firm price quotation under par. (a) for those repairs.

(4) ESTIMATE REQUIRED. If any of the following has occurred, a shop representative shall give the customer an oral or written estimate, and shall write that estimate on the repair order before the shop starts any repairs whose total price may exceed \$50:

- (a) The customer has signed estimate alternative 1 under sub. (2).
- (b) There has been face-to-face contact between the customer and a shop representative, but the customer has not signed any of the estimate alternatives under sub. (2).
- (c) The shop has accepted any prepayment from the customer.
- (d) The customer has requested an estimate before authorizing a repair under s. ATCP 132.02.

History: Cr. Register, January, 1994, No. 457, eff. 1-1-95.

ATCP 132.05 Estimated completion date. (1) Before a shop starts any repairs for which the shop has accepted a prepayment of \$250 or more, a shop representative shall give the customer an oral or written estimate of the repair completion date and shall record that estimated completion date on the repair order.

(2) If a shop is required to give an estimated completion date under sub. (1) but fails to do so, the estimated completion date is the same date that the motor vehicle, component, part or accessory is delivered to the shop for repair.

Note: If a shop is required to provide an estimated completion date, the shop must record the estimated completion date either on the repair order or on a separate document attached to the repair order. If the estimated completion date is recorded on a separate document, the separate document shall include the repair order number or other information which uniquely identifies the document with the repair order.

History: Cr. Register, January, 1994, No. 457, eff. 1-1-95; correction made under s. 13.93 (2m) (b) 1. and 7., Stats., Register, March, 1999, No. 519.

ATCP 132.06 Additional authorization. (1) ADDITIONAL REPAIRS; AUTHORIZATION REQUIRED. (a) Before a shop starts any additional repairs, beyond those previously authorized by the customer, a shop representative shall contact the customer by telephone or other means, and shall provide the customer with all of the following:

- 1. A description of the proposed additional repairs.
- 2. A good faith estimate of the price for the proposed additional repairs.
- 3. A good faith estimate of the total repair price, including the previously authorized repairs and the additional repairs.

(b) No shop may perform any additional repairs, beyond those previously authorized by the customer, unless the customer authorizes those additional repairs after receiving the information required under par. (a). Authorization may be given by telephone or other means.

(2) PRICE WILL EXCEED ESTIMATE; ADDITIONAL AUTHORIZATION. If a shop has reason to believe that the price for any repairs will exceed the estimate for those repairs, the shop may not proceed with the repairs until a shop representative contacts the customer by telephone or other means, provides the customer with a new

good faith estimate of the repair price, and obtains the customer's authorization to proceed.

(3) REPAIRS WILL NOT BE COMPLETED BY ESTIMATED DATE; ADDITIONAL AUTHORIZATION. If a shop has reason to believe that repairs will not be completed by the estimated completion date under s. ATCP 132.05, the shop may not proceed with repairs until a shop representative contacts the customer by telephone or other means, provides the customer with the shop's new estimated completion date, and obtains the customer's authorization to proceed.

(4) RECORDING ADDITIONAL AUTHORIZATION. (a) If a customer gives additional authorization under subs. (1) to (3), the shop representative shall record the additional authorization on the repair order or repair invoice.

(b) The record under par. (a) shall include all of the following:

1. The date and time of authorization.
2. The name of the person who gave the additional authorization.
3. A description of the additional repairs authorized under sub. (1), if any.
4. The new total price estimate provided under sub. (1) (a) 3. or (2), if any.
5. The new estimated completion date under sub. (3), if any.

Note: Additional authorization may be recorded on a separate document and attached to the repair order or invoice provided the separate document includes the repair order number or other information which uniquely identifies the document with the repair order or invoice.

History: Cr. Register, January, 1994, No. 457, eff. 1-1-95.

ATCP 132.07 Replaced parts; return or inspection.

(1) GENERAL REQUIREMENT. If a shop replaces or permanently removes any components, parts or accessories from a customer's motor vehicle as part of a repair, the shop shall return those components, parts or accessories to the customer if, before the shop starts the repair, the customer requests the return of those components, parts or accessories.

(2) EXEMPTION. If a shop is required to return a replaced component, part or accessory under a warranty or exchange agreement, the shop need not return that component, part or accessory to a requesting customer under sub. (1), provided the shop makes the requested component, part or accessory available for the customer's inspection before the shop returns the motor vehicle to the customer.

History: Cr. Register, January, 1994, No. 457, eff. 1-1-95.

ATCP 132.08 Repair invoice. A shop shall prepare an invoice covering every repair made by the shop. The shop shall provide the customer with a complete and accurate copy of the repair invoice before the shop returns the customer's motor vehicle to the customer. The repair invoice shall clearly and conspicuously disclose all of the following:

- (1) The name and address of the shop.
- (2) The name and address of the customer.
- (3) The date on which the repaired motor vehicle, component, part or accessory is tendered back to the customer.
- (4) The model, make and license number of the motor vehicle, if the motor vehicle has been in the shop's possession.
- (5) The odometer reading when the motor vehicle was received by the shop, if the motor vehicle has been in the shop's possession.
- (6) The price for the repairs, stated as the total price or as separate total prices for parts and labor.
- (7) An itemized description of the labor, parts, components and accessories supplied in connection with the repairs, including items supplied without cost or at reduced cost because of a shop or manufacturer's warranty. If units of labor time based on flat rate average time are stated on the invoice, the actual labor time shall also be stated.

(8) If any item under sub. (7) carries a warranty from the shop or manufacturer, a statement or notation indicating that fact.

(9) If any item under sub. (7) is used, rebuilt, recycled or reconditioned, a statement or notation indicating that fact.

(10) The identity of each person performing the repairs, including the name of any shop that performed all or part of the repairs as a subcontractor. If a shop employs more than 10 repair personnel who work in teams, the repair invoice may specify the name of the team leader whose team performed the repairs, instead of the individuals who performed the repairs, provided the shop keeps records indicating which team members worked on each repair.

(11) The following statement, printed verbatim: **"Motor vehicle repair practices are regulated by chapter ATCP 132, Wis. Adm. Code, administered by the Bureau of Consumer Protection, Wisconsin Dept. of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, Wisconsin 53708-8911."**

History: Cr. Register, January, 1994, No. 457, eff. 1-1-95.

ATCP 132.09 Prohibited practices. (1) No shop may knowingly underestimate either of the following:

(a) The price of repairs.

(b) The time required to complete the repairs.

(2) No shop may misrepresent any of the following:

(a) That repairs are necessary for the safety or effective operation of a motor vehicle.

(b) That a motor vehicle is in a dangerous condition.

(c) That failure to repair a motor vehicle will be harmful to the motor vehicle.

(d) That a repair has been made.

(e) The terms of any warranty or service agreement.

(3) No shop may fail or refuse to return a customer's motor vehicle to the customer because a customer declines to do either of the following:

(a) Pay for unauthorized repairs, provided the customer tenders payment, subject to par. (b), for the repairs that were authorized and performed.

(b) Pay any repair charge that exceeds the shop's estimate or firm price quotation for that repair, provided the customer tenders payment of the charge estimated or quoted to the customer when the customer authorized that repair.

(4) No shop may:

(a) Alter any person's motor vehicle with intent to create a condition requiring repairs.

(b) Make any motor vehicle repair or warranty advertisement which is untrue, deceptive or misleading.

(c) Fail or refuse to honor any warranty or service agreement to which the shop is a party.

(d) Make the performance of repairs contingent upon the customer's waiver of any right under this chapter.

(e) Demand or receive payment for unauthorized repairs, or for repairs that have not been performed.

(f) Falsify or destroy any document or record required to be produced or kept under this chapter.

(g) Charge or threaten to charge for preparing a repair estimate or firm price quotation unless both of the following apply:

1. The charge constitutes reasonable compensation for preliminary diagnostic work that is reasonably required for the shop to give the repair estimate or firm price quotation.

2. A shop representative discloses the charge, or the rate at which the charge will be computed, before the shop starts any diagnostic work for which a charge will be assessed.

History: Cr. Register, January, 1994, No. 457, eff. 1-1-95.

ATCP 132.10 Repair records. (1) A shop shall keep all of the following repair records:

(a) The repair order and repair invoice for each repair, including any additional authorization documents.

(b) Records identifying the individual repair personnel who worked on each repair.

(c) Invoices for motor vehicle parts, components and accessories purchased by the shop.

(2) Records under sub. (1) shall be retained for at least 2 years, and shall be made available for inspection and copying by the department upon request.

History: Cr. Register, January, 1994, No. 457, eff. 1-1-95.

ATCP 132.11 Waivers. (1) A customer who owns or leases a fleet of at least 4 motor vehicles may sign a written blanket waiver which waives that customer's rights under ss. ATCP 132.04 to 132.06 in repair transactions involving those vehicles. A waiver under this subsection may be revoked at any time, at the discretion of the customer.

(2) Neither a fleet waiver under sub. (1) nor a customer's choice of estimate alternative 3 under s. ATCP 132.04 (2) is effective unless the customer signs the waiver or estimate alternative voluntarily and with knowledge of its meaning.

History: Cr. Register, January, 1994, No. 457, eff. 1-1-95.