



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. S.B. 232\*

130th General Assembly

(As Reported by H. Commerce, Labor, and Technology)

**Sens.** Uecker, Patton, Lehner, Brown, Bacon, Eklund, Skindell

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## BILL SUMMARY

- Expands the scope of the Motor Vehicle Repair Law to include mechanical repairs and requires motor vehicle mechanical repair operators to register under the Law.
- Expands the list of persons or entities that are exempt from the requirements of the Law and narrows the exemption for used car dealers and motor vehicle auction owners.
- Reduces the maximum fee that the Motor Vehicle Repair Board may charge for registration as a motor vehicle repair operator, allows the Board to charge penalties for overdue registrations, and requires that each motor vehicle repair facility be registered separately.
- Allows the rules adopted by the Board to contain various provisions and eliminates the requirement that the Board's rules include requirements for the type of liability insurance that is required for motor vehicle repair operators to register under the Motor Vehicle Repair Law.
- Dissolves the current Board on June 30, 2015, and creates a new Motor Vehicle Repair Board on July 1, 2015.

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\* This analysis was prepared before the report of the House Commerce, Labor, and Technology Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

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## CONTENT AND OPERATION

### Scope of the Motor Vehicle Repair Law

The bill expands the scope of the Motor Vehicle Repair Law<sup>1</sup> to include mechanical repair operators that perform five or more motor vehicle repairs in a calendar year.<sup>2</sup> Mechanical repair operators are persons or entities that perform repairs that affect or potentially affect a motor vehicle's operation. Collision repair operators, who perform restorative or replacement procedures on motor vehicles to affect or potentially affect the structural, life safety, or cosmetic components of the vehicle, are already subject to the Law if they perform five or more vehicle repairs in a year. Window tint operators (those persons or entities that install tinted glass or tint material on five or more occasions in a year) also are currently subject to the Law.

### Registration

Continuing law prohibits any person from acting as a window tint operator or motor vehicle repair operator (including as a motor vehicle mechanical repair operator, as added by the bill) unless the person is registered in accordance with the Motor Vehicle Repair Law. The registration requirement for motor vehicle mechanical repair operators is delayed until six months after the bill's effective date.<sup>3</sup> A person who acts as a motor vehicle repair operator without registering under the Law is subject to a fine of not more than \$1,000 for a first offense. On each subsequent offense, the person is fined \$1,000 to \$5,000. Additionally, the person may be subject to similar administrative fines of up to \$1,000 for a first offense and \$1,000 to \$5,000 for each subsequent offense.<sup>4</sup>

Additionally, any person or entity that conducts or attempts to conduct business as a motor vehicle repair operator in violation of the Law performs an unfair and deceptive act or practice in violation of the Consumer Sales Practices Act (CSPA).<sup>5</sup> Under the CSPA, a consumer may bring an action for damages or other relief against a person who violates the CSPA. The CSPA also allows for the Attorney General to request a court to impose a civil penalty (the court may do so without a request), to

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<sup>1</sup> R.C. Chapter 4775.

<sup>2</sup> R.C. 4775.01, with conforming changes in R.C. 4775.02, 4775.03, 4775.05, and 4775.09.

<sup>3</sup> R.C. 4775.01 and 4775.02(A) and Section 2.

<sup>4</sup> R.C. 4775.99, not in the bill.

<sup>5</sup> R.C. 4775.02(C).



bring a class action, or to seek other relief to restrain the unfair or deceptive act or practice.<sup>6</sup>

### **Applying for registration**

Under continuing law, an applicant must do all of the following to register as a motor vehicle repair operator:

- Apply to the Motor Vehicle Repair Board (Board) upon forms prescribed by the Board that contain sufficient information to identify the applicant;
- Provide an affirmation of the application by oath;
- Include the initial registration fee, as set by the Board (see "**Registration fees**," below);
- Include proof satisfactory to the Board that the applicant has a current state and federal tax identification number, a valid vendor's license issued pursuant to Ohio's Sales Tax Law, a U.S. Environmental Protection Agency identification number issued under federal law, and all permits required under Ohio's Air Pollution Control Law;
- Include proof satisfactory to the Board that the applicant has general liability insurance and insurance to cover damage to motor vehicles in the applicant's care, in the amount and form required by the Board;
- Include proof satisfactory to the Board that the applicant has coverage under Ohio's Workers' Compensation Law and Ohio's Unemployment Compensation Law;
- Affirm that the applicant is in compliance with all applicable federal, state, and local laws, including applicable zoning regulations.

The bill additionally requires that an applicant who is licensed as a used motor vehicle dealer under Ohio's Used Motor Vehicle Dealer Law must include on the application the applicant's used motor vehicle license number as assigned by the Bureau of Motor Vehicles.

The bill also requires each motor vehicle repair facility to be separately registered with the Board.<sup>7</sup> Under the bill, a motor vehicle repair facility is a mobile or stationary

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<sup>6</sup> R.C. 1345.07 and R.C. 1345.09, not in the bill.

<sup>7</sup> R.C. 4775.02(B) and 4775.07(A).



location from which repairs are performed on five or more separate motor vehicles in a calendar year.<sup>8</sup> A facility that conducts both body repairs and mechanical repairs at the same location need not be registered more than once.<sup>9</sup>

### **Temporary registration**

Current law allows for those applicants who have substantially complied with the Motor Vehicle Repair Law, but who are not eligible to be issued a registration under the Law, to obtain a temporary registration. A temporary registration lasts for a year after the registration is issued or until the applicant applies for and is issued a regular motor vehicle repair registration certificate, whichever occurs first. The bill eliminates the explicit expiration of a temporary registration that is triggered when a regular registration is obtained while maintaining continuing law procedures for the transition from a temporary to a permanent registration. The bill also eliminates the current law cap on the Board renewing an applicant's temporary license more than four times and the procedures for renewal, allowing renewal to occur at the Board's discretion.<sup>10</sup>

### **Exemptions from registration**

The bill adds the following to the list of entities that are exempt from the registration requirements of the Motor Vehicle Repair Law:

- A person or business entity that is primarily engaged in the retail sale of new, used, or retreaded tires and inner tubes or is engaged in the retail sale of new, used, or retreaded tires and inner tubes in combination with mechanical repair services;
- A national general goods retailer that also performs some motor vehicle repair;
- An organization in which members pay in exchange for assistance from the organization in matters relating to travel and motor vehicle operation, use, and maintenance and for the organization to supply other services including (1) community traffic safety services, (2) travel and touring services, (3) theft and reward services, (4) map services, (5) towing services, (6) emergency road services, (7) bail bond services, (8) legal fee reimbursement in defense of traffic offenses, and (9) sickness and accident or life insurance;

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<sup>8</sup> R.C. 4775.01(H).

<sup>9</sup> R.C. 4775.02(B).

<sup>10</sup> R.C. 4775.10.



- A person or entity that is primarily engaged in towing, recovery, and storage of motor vehicles and that has a current and valid certificate of public convenience as required by the For-Hire Motor Carrier Law.

The bill narrows the current law exemption for licensed used motor vehicle dealers to exempt only those used motor vehicle dealers who are primarily engaged in the sale of used motor vehicles. Licensed new motor vehicle dealers continue to be exempt from the Law under the bill, even if the dealer is also licensed as a used motor vehicle dealer.

The bill also appears to eliminate a current law exemption for motor vehicle auction owners licensed pursuant to the Motor Vehicle Dealer Law. Under the bill, those owners are exempt only if they do not perform motor vehicle repairs. Because a person or entity must perform five or more motor vehicle repairs to be considered a motor vehicle repair operator subject to the registration requirement, it is unclear whether any auction owner who is considered a motor vehicle repair operator and subject to the registration requirement could meet the requirements for exemption.<sup>11</sup>

### **Registration fees**

Continuing law requires a motor vehicle repair operator to pay a registration fee of \$150 for each business location at which the motor vehicle repair operator conducts business. The Board may establish fees in excess of or less than that amount with Controlling Board approval. The bill removes the current law minimum for the change in this fee, decreases the maximum fee from \$225 to \$200, and allows the Board to impose an additional fee for late registration. The bill also requires the Board to issue a registration to a licensed used motor vehicle dealer or to a tax-exempt nonprofit organization that provides motor vehicle repair services without requiring payment of a registration fee.<sup>12</sup>

### **Denied registration**

Under continuing law largely retained by the bill, no person whose application for registration under the Law is denied may open or operate a facility for business as a motor vehicle repair facility (expanded from only collision facilities under current law) or motor vehicle window tint installation facility under the name of the person designated in the application for a registration certificate, or under any other name prior to registering as a motor vehicle repair operator. Motor vehicle repair facilities and window tint installation facilities include, under the bill, both mobile and stationary

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<sup>11</sup> R.C. 4775.01.

<sup>12</sup> R.C. 4775.08.



locations from which five or more separate motor vehicle repairs or window tint installations, respectively, are installed in a calendar year.<sup>13</sup>

## **The Motor Vehicle Repair Board**

The bill dissolves the Motor Vehicle Repair Board as it currently exists on June 30, 2015. A new board is created by the bill to take the place of the dissolved Board as of July 1, 2015. The composition of the new Board is as follows:

- Two members who are motor vehicle body repair operators (collision operators under current law);
- Two members who are motor vehicle mechanical repair operators;
- Two members who are either motor vehicle window tint operators;
- One member who is a disinterested member of the public.

The Governor must make initial appointments to the Board by July 1, 2015, and a list of nominees must be submitted to the Governor by the Automotive Service Association of Ohio by April 1, 2015. Of the initial appointments, three are for terms ending January 1, 2016, two are for terms ending January 1, 2017, and two are for terms ending January 1, 2018.

For the period after the bill's effective date, but before the Board is dissolved, five positions on the Board, which were previously reserved for motor vehicle collision repair operators, may be filled also by motor vehicle mechanical repair operators or motor vehicle window tint operators. The remaining two positions on the Board during this period must continue to be filled by one person with expertise in motor vehicle mechanical repair and one person with no financial interest in the motor vehicle repair industry.<sup>14</sup>

## **Rules**

Continuing law requires the Board to adopt rules in accordance with the Administrative Procedure Act<sup>15</sup> to carry out the purposes of the Motor Vehicle Repair Law. The bill permits, rather than requires as under current law, the rules to include requirements for the type of liability insurance required for registration under the Motor Vehicle Repair Law. Because the Board is required to carry out the purposes of

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<sup>13</sup> R.C. 4775.09(E) and 4775.01(H) and (I).

<sup>14</sup> R.C. 4775.03 and Sections 4 and 7.

<sup>15</sup> R.C. Chapter 119.



the Law, and because the Law requires applicants for registration to provide proof of liability insurance "in an amount and form that conforms to the rules that the board adopts," the Board is likely still required to adopt these rules.<sup>16</sup>

The bill also permits the Board to adopt rules addressing the following:

- Consumer education and protection, including inside and outside signage for the benefit of consumers;
- The establishment of a toll-free telephone number for consumers to call to voice complaints about an operator;
- Relevant aspects of registration of motor vehicle repair operators, including the identification by the National Institute of Automotive Service Excellence Category of Services Provided or their equivalents and the form for license applications;
- The contents of all estimates and invoices issued by operators;
- Compliance by operators with all local ordinances and state and federal laws;
- The certification of technicians employed by operators;
- Minimum training requirements for technicians and administrative staff employed by operators;
- Appropriate equipment requirements for operators who perform body repair and mechanical repair.

The bill also removes a current law restriction that prevents the Board from exercising authority over a motor vehicle collision repair operator concerning the quality of work performed in the repair of, or installation of parts on, motor vehicles.<sup>17</sup>

## **Preemption**

Under continuing law, the General Assembly intends to preempt local laws enacted after December 18, 1997, with respect to motor vehicle collision repair operators and March 22, 2013, for motor vehicle window tint operators. The bill expands this intent to include local laws covering motor vehicle mechanical repair operators enacted

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<sup>16</sup> R.C. 4775.04 and 4775.07.

<sup>17</sup> R.C. 4775.04.



after the bill's effective date. Continuing law provides that the Law does not preempt any local law that requires registration or licensure as a component of imposing additional requirements on persons engaged in business as a motor vehicle repair operator or technician or the enforcement of any local law regulating motor vehicle repair operators or technicians.<sup>18</sup>

## Terms and definitions

The following definitions apply to the bill:

- "Mechanical" means any original manufacturer equipment or aftermarket systems or parts designed for use in or on a motor vehicle, including the drive and power train, engine, transmission, suspension, steering, brakes, illumination system, heating and cooling system, air conditioning, climate controls, exhaust, fuel, ignition, starting and charging, lubrication, tires, driver and passenger restraint systems, vehicle anti-theft, and security systems.
- "Mechanical repair" means any alteration or maintenance, diagnostic, or repair service procedures that are performed on and affect or potentially affect the operation of a motor vehicle.
- "Motor vehicle repair" means either a motor vehicle body repair (changed from "motor vehicle collision repair" under current law) or a motor vehicle mechanical repair.<sup>19</sup>

The title of "enforcement officer" is changed by the bill to "investigator" throughout the Motor Vehicle Repair Law. This change does not appear to affect the powers or responsibilities of investigators.<sup>20</sup>

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## HISTORY

ACTION	DATE
Introduced	11-12-13
Reported, S. Commerce & Labor	11-20-14
Passed Senate (31-1)	12-03-14
Reported, H. Commerce, Labor, & Technology	---

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<sup>18</sup> R.C. 4775.11.

<sup>19</sup> R.C. 4775.01.

<sup>20</sup> R.C. 4775.05 and 4775.06.

