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Michigan Motor Vehicle Service and Repair Act of 1974

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MICHIGAN MOTOR VEHICLE SERVICE AND REPAIR ACT OF 1974

The need for a comprehensive consumer protection program in the automobile repair industry has long been evident.¹ Not only are auto repairs a leading source of consumer complaints,² but consumer dissatisfaction in this area is increasing as well.³ Complaints allege a broad spectrum of incompetence, negligence, and fraud by repairers,⁴ with common accusations including inadequate repairs which necessitate return trips, unnecessary repairs, charges for work not done, and escalating estimates.⁵ Furthermore, incidents of deliberate deception are not uncommon.⁶ Even minor repairs, such as tire changes, may give rise to fraud and deception.⁷ Recent

¹ See generally *Hearings on the Automotive Repair Industry Before the Subcomm. on Anti-trust and Monopoly of the Senate Comm. on the Judiciary*, 90th Cong., 2d Sess., pt. 1 (1968); *id.*, 91st Cong., 1st Sess., pt. 2 (1969); *id.*, 91st Cong., 1st Sess., pt. 3 (1970); *id.*, 91st Cong., 2d Sess., pt. 4 (1970); *id.*, 91st Cong., 2d Sess., pt. 5 (1971); *id.*, 91st Cong., 2d Sess., pt. 6 (1971) [hereinafter cited as *Senate Hearings*]; Note, *Regulation of Automotive Repair Services*, 56 CORNELL L. REV. 1010 (1971). The repair industry affects almost all consumers; in 1972 four out of five households owned automobiles. MOTOR VEHICLE MFRS. ASS'N, AUTOMOBILE FACTS AND FIGURES 1973/1974 30 (1974) [hereinafter cited as AUTOMOBILE FACTS].

² Detroit News, Sept. 11, 1974, at 8-D, col. 3; New York Times, Dec. 8, 1974, at 83, col. 1; New York Times, Jan. 11, 1973, at 25, col. 1; *Hearings on S.B. 687, S.B. 726, H.B. 5047 Before the Michigan Senate Comm. on State Affairs*, 77th Leg., Reg. Sess. 1973, Grand Rapids, at 37 (Nov. 3, 1973) [hereinafter cited as *Hearings, Grand Rapids*]; Letter from Fern S. Wright, Consumer Protection Division, Department of the Attorney General, Michigan, to author, Dec. 6, 1974, on file with the *University of Michigan Journal of Law Reform* (for years auto repair has consistently been the primary consumer complaint in Michigan).

³ New York Times, June 26, 1974, at 46, col. 1 (increase in both the number of complaints and the percentage of the total); *id.*, Apr. 14, 1974, at 40, col. 3.

⁴ *Id.*, June 26, 1974, at 46, col. 1 (federal study); *id.*, Oct. 4, 1972, at 44, col. 3 (New York study); *Senate Hearings*, *supra* note 1, at 724-32 (California study); *Hearings on S.B. 687, S.B. 726, H.B. 5047 Before the Michigan Senate Comm. on State Affairs*, 77th Leg., Reg. Sess. 1973, Detroit, at 19, 36 (Sept. 2, 1973) (complaints received by Consumer Protection Division, Department of the Attorney General, Michigan, and by the Prosecutor, Oakland County, Michigan) [hereinafter cited as *Hearings, Detroit*].

⁵ *Senate Hearings*, *supra* note 1, at 55-56, 121-22, 724-32. For a comprehensive survey of consumer problems with auto repair services see Note, *supra* note 1, 1010-16.

⁶ E.g., CHANGING TIMES, June 1974, at 14 (spraying alternator with oil to set it on fire).

⁷ *Hearings on S.B. 687, S.B. 726, H.B. 5047 Before the Michigan Senate Comm. on State Affairs*, 77th Leg., Reg. Sess. 1973, Lansing, at 61 (Sept. 21, 1973) [hereinafter cited as *Hearings, Lansing*]. Light specialty shops (mufflers, brakes, shock absorbers), especially receive complaints about unnecessary repairs. New York Times, Oct. 4, 1972, at 44, col. 3. Women are particularly susceptible to the minor repairs frauds. *Senate Hearings*, *supra* note 1, at 97.

studies in Michigan indicate that the chances that a consumer will get competent diagnosis and repair at a fair price are poor.⁸ The combination of a technical, and increasingly complex, field of service and a mechanically unsophisticated public make deception especially facile.⁹

While the performance of the repair industry has long been unsatisfactory, the current economic downturn may turn a consumer problem into a consumer crisis. The recent dramatic decline in new car sales means that more drivers are keeping their older vehicles. Because the average age of motor vehicles on the road is increasing and because older vehicles have a higher frequency of repair, the demand for repair services is rising.¹⁰ In addition, some dealers are trying to meet overhead costs and compensate for the income lost from lagging sales by recommending maintenance work not actually required.¹¹ These developments come at a time when inflation has pushed the cost of repair up by 11.3 percent in the year ending August, 1974.¹²

This note will analyze the the Michigan Motor Vehicle Service and Repair Act,¹³ examining the differences between it and prior Michigan and federal legislation. The new legislation will be compared with similar statutes in other states. Finally, the possible drawbacks of repair shop and mechanic certification programs will be discussed, and suggestions for improvements will be made.

⁸ A March, 1973 study, sponsored by the Michigan Citizens Lobby, of fifty repair facilities, including twenty-five dealerships, reported that 88 percent of the dealerships and 71 percent of the independent garages were either incompetent or dishonest or both. *Detroit News*, July 17, 1973, at 7-A, col. 1. Repair estimates for a \$1 item ranged from \$13 to \$110. *Detroit News*, Aug. 12, 1973, at 28-A. Another study sponsored by the Michigan Attorney General revealed that of thirty-five dealers surveyed for the diagnosis and repair of a defective spark plug wire, only ten performed the needed repair without excessive cost or unnecessary parts. DETROIT TESTING LABORATORY, DEALER SURVEY OF COSTS AND REPAIRS ON STATE CARS WITH INTENTIONAL DEFECTS, Nov. 26, 1973 (on file at the Consumer Protection Division, Department of the Attorney General, Michigan). For the results of similar studies in other states see NEW YORK STATE JOINT LEGISLATIVE COMM. ON CONSUMER PROTECTION, THIRD ANNUAL REPORT, 1968 N.Y. LEG. DOC. NO. 34, at 30-31 [hereinafter cited as THIRD ANNUAL REPORT].

⁹ *Senate Hearings*, *supra* note 1, at 734.

¹⁰ *New York Times*, Dec. 8, 1974, at 83, col. 1. See also BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE STATISTICAL ABSTRACT OF THE UNITED STATES: 1973, at 550 (1973). This sudden change comes on top of a long-term trend toward more intense vehicle usage. From 1963 to 1972 the average number of miles driven per car per year increased from 9,240 to 10,184. AUTOMOBILE FACTS, *supra* note 1, at 44.

¹¹ *New York Times*, Sept. 23, 1974, at 1, col. 2.

¹² *Id.* The comparable 1972 increase was 5.3 percent.

¹³ Mich. Pub. Act No. 300 (Oct. 18, 1974); MICH. COMP. LAWS ANN. § 257.1301 *et seq.* (West's 1974 Mich. Legis. Serv. No. 4 at 849-60).

I. THE SETTING FOR STATE LEGISLATION

A. Economic and Technical Peculiarities of Auto Repair

The high incidence of consumer difficulty in the field of auto repair stems from underlying labor, manufacturing, and economic problems in the motor vehicle industries. The recent surge in demand for repair services comes on top of chronic shortage of trained mechanics.¹⁴ Although vocational classes are available for training mechanics, these programs do not supply enough new people. Of the 98,000 graduates of auto mechanics courses at vocational schools in 1966, only 17,000 actually entered the trade.¹⁵ One reason suggested is that there is insufficient inducement to attract young people to this unglamorous occupation.¹⁶ An effect of such a shortage is that free market competition will not force out the marginally competent repairman, in contrast to the result under a normal balance of supply and demand.¹⁷

To add to the problem of a shortage of trained personnel, the automobile is technically complex, and manufacturers frequently make design changes. A motor vehicle has about 15,000 parts,¹⁸ and buyers are increasingly demanding such mechanically intricate options as automatic transmissions and air conditioning.¹⁹ Manufacturers have not made serviceability a priority in auto design; minor repairs may require major dismantling because of the inaccessibility of affected parts.²⁰ Furthermore, federally mandated

¹⁴ New York Times, Sept. 23, 1974, at 1, col. 2; *Senate Hearings, supra* note 1, at 88-89, 1291, 1529, 1746, 1989; *Hearings, Lansing, supra* note 7, at 19.

¹⁵ *Senate Hearings, supra* note 1, at 1989. Vocational training plays only a minor part in the education of mechanics, with most repairers acquiring their skills through on-the-job training. S. BORCHER & P. LEISTER, AUTOMOTIVE MECHANICS OCCUPATIONAL PERFORMANCE SURVEY 8 (1973).

¹⁶ *Senate Hearings, supra* note 1, at 144, 1989. See also *Hearings, Detroit, supra* note 4, at 26, 65.

¹⁷ Note, *supra* note 1, at 1028-29.

¹⁸ *Senate Hearings, supra* note 1, at 1355; *Hearings, Detroit, supra* note 4, at 16.

¹⁹ *Senate Hearings, supra* note 1, at 1200. Of the 1973 U.S. models, the percentage of cars with factory-installed options was as follows: automatic transmission, 93.4 percent; power steering, 87.7 percent; power brakes, 74.5 percent; and air conditioning, 72.6 percent. AUTOMOBILE FACTS, *supra* note 1, at 23.

²⁰ *Senate Hearings, supra* note 1, at 147, 175. For example, some front bumpers and grilles are held together by as many as fifty-seven bolts and require three men to install them. *Id.* at 175.

design changes, such as pollution control devices, are giving mechanics problems because of their complexity.²¹ Such advances in design sophistication only exacerbate the mechanical skills shortage.

For those who are attracted to the trade and become skilled, compensation methods create an opportunity (and an incentive) for sloppy workmanship and deceptive practices. Under the "flat-rate" system, which auto manufacturers use to reimburse dealers for warranty work, and which shop owners use to charge for retail repairs, compensation for a job is calculated according to a predetermined time schedule and not according to the actual time needed to complete a repair.²² In addition, dealers frequently pay their mechanics a percentage of the repair revenue.²³ Consequently, there are financial incentives for the mechanic to perform a hasty job and to replace rather than repair defective parts in order to beat the flat-rate time and maximize actual hourly compensation.²⁴ As an added problem, service managers who authorize repairs are frequently paid on commission, based on the amount of work done,²⁵ which creates an incentive to write up unnecessary repairs.²⁶

²¹ New York Times, June 26, 1974, at 40, col. 1. Poorly maintained, untuned cars tend to emit more pollution than those which are well serviced. Unless repair is competently done, factory installed devices are of little avail in reducing emissions. *Hearings, Detroit, supra* note 4, at 5-13.

²² *Senate Hearings, supra* note 1, at 117, 142, 549, 2028, 2039-40. Insurance companies also use these manuals to calculate compensation for damages. *Id.* at 209. The Detroit area has one of the highest incidences of use of the flat-rate percentage system. U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. NO. 1689, INDUSTRY WAGE SURVEY, AUTO DEALER REPAIR SHOPS 17 (1971).

²³ FEDERAL TRADE COMMISSION, REPORT ON AUTOMOBILE WARRANTIES 119-21 (1970); *Senate Hearings, supra* note 1, at 829, 2409. Two-thirds of the mechanics at dealerships are paid under a flat-rate percentage plan, amounting to 45 percent to 50 percent of the charge to customers. U.S. BUREAU OF LABOR STATISTICS, *supra* note 22, at 2.

²⁴ *Senate Hearings, supra* note 1, at 25, 101-21, 648, 1099, 2188-89, 2195, 2431. Some mechanics have difficulty in performing jobs within the flat-rate time. *Id.* at 354. Repairmen who do manage to "beat the time" are essentially overcharging the customer for labor. *Hearings, Lansing, supra* note 7, at 44. On the one hand, the auto manufacturers (and independent publishers who write the manuals) and the insurance companies argue that the flat-rate system protects both the manufacturer and the consumer against the slow mechanic and provides some consistency in repair charges. *Hearings, Lansing, supra* note 7, at 69; *Senate Hearings, supra* note 1, at 142, 368. On the other hand, studies have indicated that compensation for warranty work is less than that for retail repair services charged on an actual time basis. Consequently, dealers may tend to put less skilled men on the warranty jobs, and mechanics may slight the lower paying jobs. The consumer suffers ultimately, because, if he is to benefit from his warranty, he has to deal with this flat-rate system of compensation. *Senate Hearings, supra* note 1, at 535-43, 669.

²⁵ U.S. BUREAU OF LABOR STATISTICS, *supra* note 22, at 2.

²⁶ *Hearings, Lansing, supra* note 7, at 55.

B. Pre-existing Michigan Law

Whatever the underlying causes for incompetence and fraud may be, Michigan laws have provided no administrative machinery suitable for processing consumer complaints and eradicating deceptive practices.²⁷ While new and used car dealers have been licensed by the Secretary of State for several years,²⁸ the scheme does not prevent fraudulent practices.²⁹ Often, a consumer who is alleging fraud will find no place where his complaint can receive a full and complete airing.³⁰ In processing these complaints, the Secretary of State has been plagued by manpower deficiencies,³¹ difficulties inherent in proving fraudulent representation,³² and a lack of legislative mandate to prosecute independent repairers.³³ The effectiveness of the Attorney General's Consumer Frauds Division has also been hampered by both a low budget and a lack of enforcement machinery.³⁴

Private civil actions by consumers are rare because attorneys' fees are too high to make most suits worthwhile³⁵ and actions in small claims court are limited to \$300.³⁶ Furthermore, at work against the customer in a dispute are statutory and common-law garageman's liens, which permit repairers involved in a dispute to retain possession of a vehicle until they are paid.³⁷ The customer, who badly needs the use of his vehicle and is faced with the prospect of not having it returned, is thereby induced to pay the stated

²⁷ See generally Comment, *Consumer Protection in Michigan: Current Methods and Some Proposals for Reform*, 68 MICH. L. REV. 926, 952-77 (1970).

²⁸ MICH. COMP. LAWS ANN. § 257.248-.251 (1967).

²⁹ Comment, *supra* note 27, at 958.

³⁰ *Hearings, Detroit*, *supra* note 4, at 20, 30. See also Comment, *supra* note 27, at 960.

³¹ Comment, *supra* note 27, at 963 n. 244, 964 n. 250.

³² MICH. COMP. LAWS ANN. § 257.249(d) (1967); *Hearings, Detroit*, *supra* note 4, at 19-20. Complaints are rarely received alleging fraudulent practices, and dealer licenses are seldom suspended for fraud. Comment, *supra* note 27, at 963-64.

³³ *Hearings, Detroit*, *supra* note 4, at 20, 22, 37.

³⁴ Comment, *supra* note 27, at 967. An existing statute prohibits the making or circulation of deceptive or misleading advertisements. MICH. COMP. LAWS ANN. § 445.801 (1967). Another possible enforcement tool is MICH. COMP. LAWS ANN. § 750.280 (1968) (gross frauds and cheats), but it is likely to be no more effective than the fraud provisions of the dealer licensing statute. See MICH. COMP. LAWS ANN. § 257.249(d) (1967). For the resolution of budgetary problems under the new Act, see note 55 *infra*.

³⁵ *Hearings, Grand Rapids*, *supra* note 2, at 41.

³⁶ MICH. COMP. LAWS ANN. §§ 600.8401-.8425 (Supp. 1974). Repair costs are frequently in the \$200 to \$400 range. *Detroit News*, Apr. 24, 1973, at 22-A, col. 3.

³⁷ *Hearings, Detroit*, *supra* note 4, at 19; MICH. COMP. LAWS ANN. § 570.301 (1967); *Nickell v. Lambrecht*, 29 Mich. App. 191, 185 N.W. 2d 155 (1970). Recent cases, which arose after disputes between customers and repair shops over the cost of repairs, have upheld the constitutionality of the garageman's possessory lien against attacks of lack of due process predicated in part on *Fuentes v. Shevin*, 407 U.S. 67 (1972), *reh. denied*, 409 U.S. 902 (1972). *E.g.*, *Phillips v. Money*, 503 F.2d 990 (7th Cir. 1974); *Adams v. Dep't of Motor Vehicles*, 11 Cal. 3d 146, 113 Cal. Rptr. 145, 520 P.2d 961 (1974).

charges though he is unhappy with the service.³⁸ Once he has paid, the consumer slips into a less favorable bargaining position.

C. Federal Means of Enforcement

Like the state law, existing federal statutes provide only limited remedial protection for the consumer. Although some price fixing among repair facilities has been attacked through the Sherman Antitrust Act,³⁹ the most effective route of attack has been against unfair or deceptive practices in interstate commerce under the Federal Trade Commission Act.⁴⁰ Prosecutions are rare, but when they are undertaken, relief can be effective.

In the *AAMCO* case,⁴¹ the leading example, the defendant was charged with fraudulently obtaining authorization to remove transmissions, refusing to reassemble transmissions without additional compensation, refusing to give itemized statements, and using old parts instead of new ones without notifying the customer. Under a consent decree, AAMCO must now maintain its own program of surveillance over its franchisees to guard against prohibited activities.

Recent amendments to the Federal Trade Commission Act⁴² presage more effective enforcement and broader consumer remedies. With new powers to prosecute knowing violators directly, without the necessity of a cease-and-desist order in each case,⁴³ the Commission can whipsaw other offenders into compliance.⁴⁴ In addition, the Commission may institute civil action to obtain restitution and damages for individual customers.⁴⁵ The jurisdic-

³⁸ *Hearings, Detroit, supra* note 4, at 19.

³⁹ 15 U.S.C. § 1 (1970). *E.g.*, *United States v. Independent Garage Owners of Athens*, 1972 Trade Cas. ¶ 74,000 (M.D. Ga. 1972) (consent decree); *United States v. Greater Washington Serv. Station Ass'n Inc.*, 1962 Trade Cas. ¶ 70, 372 (D.D.C. 1962) (consent decree).

⁴⁰ 15 U.S.C. § 45 (1970). The Federal Trade Commission receives numerous consumer complaints regarding auto repair, with the New York regional office accounting for about 1,000 complaints per year. *New York Times*, Apr. 14, 1974, at 40, col. 3.

⁴¹ *AAMCO Automatic Transmissions, Inc.*, 77 F.T.C. 1559 (1970). In *Nationwide Safti-Brake Distributors, Inc.*, 80 F.T.C. 873 (1972), the Commission required respondent to cease the practice of "lo-balling," where the respondent attracted customers by advertising a low price but refused to guarantee any work unless additional repairs, normally necessary to the advertised repair, were also paid for. *See also Earl Scheib, Inc.*, 63 F.T.C. 1049 (1963) (prohibited a bait-and-switch tactic by auto paint shops).

⁴² Pub. L. No. 93-673 (Jan. 4, 1975) (4 CCH TRADE REG. REP. ¶ ¶ 25,240-73, at 30,101-28 (1975)).

⁴³ *Id.* § 205(a) (4 CCH TRADE REG. REP. ¶ 25,256A, at 30,111 (1975)).

⁴⁴ *Wall St. Journal*, Jan. 20, 1975, at 5, col. 1. After winning a suit against a small, weak company, the Commissioner can use the judgment to pressure other larger enterprises to conform without having to overcome the resistance of legal counsel of these businesses.

⁴⁵ Pub. L. No. 93-637 § 206(a) (Jan. 4, 1975) (4 CCH TRADE REG. REP. ¶ 25,271, at 30,126-27 (1975)).

tion of the Commission is also broader, encompassing deceptive acts or practices in or affecting interstate commerce.⁴⁶

D. Private Efforts at Reform

Another effort being made on a national scale to improve the quality of auto repair is a voluntary mechanic certification program aimed at increasing industry professionalism and enhancing consumer confidence. The National Institute for Automotive Service Excellence (NIASE) administers tests throughout the country in eight areas of specialization. If a mechanic has at least two years of working experience and passes the examination, he may wear a patch on his uniform to indicate his proficiency.⁴⁷ To publicize the skills of its certificate holders, NIASE publishes a directory of shops with certified mechanics.⁴⁸ Because the program is new, only a small percentage of the country's mechanics have become certified.⁴⁹ Even if the program grows, however, the shortage of personnel in the industry might allow incompetent repairmen to stay in business.⁵⁰ It is also uncertain whether consumers will accept this private certification as an index of competence.

⁴⁶ 15 U.S.C. § 45 (1970), *as amended*, Pub. L. No. 93-673, §201(a) (4 CCH TRADE REG. REP. ¶125,245, at 30,104(1975)) (replaces "in commerce" with "in or affecting commerce"). The practical effect of commission's power to regulate repair facilities is therefore uncertain.

But for an example of the effective scope of the Commission's jurisdiction under the "in commerce" limitation see *Joseph Jiminez*, 52 F.T.C. 1493 (1956), which held that the Commission had jurisdiction to prevent deceptive advertising by a single television repair shop in Washington, D.C., because some televisions were picked up and delivered in Maryland. A specific area in which jurisdiction would not be an issue is the repair and replacement of odometers, which is completely under federal regulation. 15 U.S.C.A. §§ 1981-91 (1974). Anyone violating the act with intent to defraud is liable for treble damages, costs, and attorneys fees. 15 U.S.C.A. § 1989 (1974). Injunctive relief is also available. 15 U.S.C.A. § 1990 (1974).

⁴⁷ *New York Times*, Mar. 19, 1973, at 19, col. 1; 3 CCH CONSUMERISM 59 (1974).

⁴⁸ 3 CCH CONSUMERISM 59 (1974).

⁴⁹ Seventy-four thousand of the approximately 800,000 mechanics in the country have taken the exams, and 55,000 have won certificates in one or more specialties. *New York Times*, Dec. 8, 1974, at 83, col. 1. In Michigan only 20 percent of the mechanics working for new car dealerships have taken the test. *Hearings, Detroit, supra* note 4, at 47.

⁵⁰ See note 16 and accompanying text *supra*.

II. THE PROVISIONS OF THE 1974 MICHIGAN ACT

A. General Coverage of the Act

In response to the shortcomings of prior efforts to deal with the problems in the repair industry, the Michigan Motor Vehicle Service and Repair Act⁵¹ provides for certification of mechanics in addition to registration of repair facilities.⁵² The requirements for mechanics make this law more ambitious in scope than analogous statutes in other states.⁵³ As in the case of dealer registrations,⁵⁴ the Secretary of State will administer the statute.⁵⁵

To become certified, all mechanics, whether or not they have practiced before, must take an examination.⁵⁶ Anyone may be certified as a "specialty mechanic" in one or more of eight repair categories, such as brakes or automatic transmissions,⁵⁷ or certified as a "master mechanic" if he passes examinations in all specialty designations.⁵⁸ If an applicant fails an exam and does not want to continue working as a noncertified mechanic, he may ob-

⁵¹ Mich. Pub. Act No. 300 (Oct. 18, 1974); MICH. COMP. LAWS ANN. § 257.1301 *et seq.* (West's 1974 Mich. Legis. Serv. No. 4 at 849-60) [hereinafter cited as MICH. MOTOR VEHICLE REPAIR ACT].

⁵² A proposal for only the registration of facilities was considered and rejected in favor of the present law. H.B. 4902, 77th Mich. Leg., Reg. Sess. (1973).

⁵³ See notes 100-22 and accompanying text *infra*.

⁵⁴ MICH. COMP. LAWS ANN. §§ 257.248-.251 (1967).

⁵⁵ MICH. MOTOR VEHICLE REPAIR ACT §§ 257.1302(a), 257.1308. The "administrator" of the Act is either the Secretary of State or a person designated by him to act in his place. *Id.* The Secretary will be able to fund at least part of the program through registration and certification fees. *Id.* § 257.1330. Whether the Secretary will be able to avoid the fiscal constraints which have hampered the Consumer Frauds Division of the Attorney General's Office is a crucial question which can be answered only after the administrative machinery takes form, but at least this program has a source of revenue independent from the state budget.

⁵⁶ MICH. MOTOR VEHICLE REPAIR ACT § 257.1312. Conspicuous in its absence is the grandfather clause which appeared in the bill as originally introduced. H.B. 5047, 77th Mich. Leg., Reg. Sess. § 13 (1973). A grandfather clause was also provided in an alternate proposal. S.B. 687, 77th Mich. Leg., Reg. Sess. § 8 (1973).

⁵⁷ MICH. MOTOR VEHICLE REPAIR ACT § 257.1310(1). The need for specialty categories was not reflected in the original bill. H.B. 5047, 77th Mich. Leg., Reg. Sess. (1973). During the hearings on the bill, a strong argument was made for dispensing with specialty examinations because they were too difficult and expensive to administer. *Hearings, Lansing, supra* note 7, at 46-48. But with the increasing complexity of modern cars and the frequency of design changes, specialization is becoming the norm of repair practice. *Hearings on S.B. 687, S.B. 726, H.B. 5047 Before the Senate Comm. on State Affairs, 77th Leg., Reg. Sess. 1973, Ann Arbor, at 10, 32 (Oct. 1, 1973)* [hereinafter cited as *Hearings, Ann Arbor*]. It would be unreasonable to expect an automatic transmission specialist, with years of experience, to go back to school and restudy other parts of the car just in order to become certified as a general mechanic.

⁵⁸ MICH. MOTOR VEHICLE REPAIR ACT § 257.1310(2).

tain a trainee permit for not more than two years, and the Secretary of State is required to establish educational programs designed to provide trainees with the technical training necessary for them to pass a certification examination.⁵⁹ Certification is not necessary for a person who repairs his family car⁶⁰ or only the vehicles of a single enterprise or government agency.⁶¹ Nor is it required for a mechanic employed by an auto manufacturer to work on the manufacturer's own vehicles.⁶²

The second mode of state control is through registration of repair facilities. Beginning on January 1, 1978, all facilities must have at least one mechanic certified for the type of repair being performed, and a certified mechanic must inspect all work done by the facility's noncertified employees.⁶³ The inspection requirement will be waived, however, if a customer requests in writing an emergency repair.⁶⁴ Excluded from the designation of "repair facility" are gasoline stations which provide "minor services," such as changing tires, batteries, and oil filters.⁶⁵

B. Enforcement of the Act

To enforce the statute's requirements for certification and registration, the Act gives the Secretary of State a panoply of powers and duties. First, to ensure participation of the public, the administrator⁶⁶ must establish both a public information program and a procedure for receiving consumer complaints.⁶⁷ Second,

⁵⁹ *Id.* § 257.1313. The specific rules for this training program, such as the eligibility criteria for applicants, are to be established by the administrator. *Id.* Nothing in the Act bars an applicant from taking the examination several times. Whether a person may qualify for more than one period as a trainee is not clear and will have to be resolved by rule.

⁶⁰ *Id.* §§ 257.1302(g)(2), 1304(a).

⁶¹ *Id.* § 257.1302(g)(1).

⁶² *Id.* § 257.1304 (b).

⁶³ *Id.* § 257.1305. The act clearly does not bar a repairman who has not passed an examination from being gainfully employed in his chosen occupation provided that he works under the supervision of a certified mechanic. In this respect the power vested in the Secretary of State is not overly threatening to the livelihood of the regulated persons.

⁶⁴ *Id.* This exception solves the often neglected dilemma of what to do about a motorist who is stranded at a remote gas station and needs temporary repairs. An "emergency" is not defined in the statute.

⁶⁵ *Id.* § 257.1303. Minor repairs have, however, been the object of deceptive acts and practices. See note 7 *supra*. See notes 185-87 and accompanying text *infra*.

⁶⁶ The administrator is the Secretary of State or a person designated by him to act in his place. See note 55 *supra*.

⁶⁷ MICH. MOTOR VEHICLE REPAIR ACT §§ 257.1309(e), (g). These provisions could close what has been one of the major gaps in pre-existing Michigan law. See note 33 and accompanying text *supra*.

either in response to these consumer complaints, or on his own initiative, the administrator shall conduct investigations and make inspections.⁶⁸ Third, to indemnify any injured party in the event of a monetary loss resulting from fraud, misrepresentation, or cheating, a repair facility must secure a \$10,000 surety bond.⁶⁹ Fourth, each repair facility must appoint the Secretary of State as agent for service of process.⁷⁰ Finally, those persons violating the provisions of the Act are covered by long-arm personal jurisdiction for noncriminal proceedings.⁷¹

To complement these underlying enforcement provisions, the Act sets forth requirements for the day-to-day operation of a facility. As an initial requirement, if a facility agrees to perform a repair, it must give an itemized estimate.⁷² After the customer approves the estimate, any cost exceeding the stated figure requires his prior consent.⁷³ As an added precondition to performing repair services or eliciting a customer's signature on any document, the facility must inform the driver in boldface type on all contracts and work orders of his right to examine and receive back all replaced parts.⁷⁴ Completed repairs must be accompanied by a signed, itemized invoice and a signed statement that repairs undertaken were "completed properly."⁷⁵ These are the provisions of the Act with which the consumer will be most concerned.

In the event of violation of the provisions of the Act, the administrator may initiate either nondisciplinary or disciplinary proceedings. The administrator has the express authority to mediate disputes between a customer and a facility,⁷⁶ and in so doing may

⁶⁸ MICH. MOTOR VEHICLE REPAIR ACT §§ 257.1317, .1326(1), (2) (d), (e).

⁶⁹ *Id.* § 257.1314(d). The cost of such a bond is about \$50. *Hearings, Detroit, supra* note 4, at 56.

⁷⁰ MICH. MOTOR VEHICLE REPAIR ACT § 257.1314(f).

⁷¹ *Id.* § 257.1329.

⁷² *Id.* § 257.1332.

⁷³ *Id.* This provision should solve one of the problems raised in the *AAMCO* case. *See* note 41 *supra*. If, after the diagnosis, the customer does not consent to the repair, he must pay for the cost of returning the vehicle to its original condition. MICH. MOTOR VEHICLE REPAIR ACT § 257.1332(2). This provision, which essentially requires payment for diagnosis, is a necessary compromise between the need for the customer to obtain a definite, binding estimate and the difficulty for the mechanic to ascertain the extent of repairs he must perform without dismantling the vehicle.

⁷⁴ MICH. MOTOR VEHICLE REPAIR ACT § 257.1333. This provision will not prevent a repairer from deceiving a customer by "returning" a part which came from a junk pile and not from the car. *See Senate Hearings, supra* note 1, at 729.

⁷⁵ MICH. MOTOR VEHICLE REPAIR ACT § 257.1334. This statement will probably be valuable in enforcing some minimum standards of competent work, since "completed properly" connotes some objective standard of workmanship.

⁷⁶ *Id.* § 257.1326(2)(b). The Secretary of State lobbied for this nondisciplinary power. *Hearings, Grand Rapids, supra* note 2, at 49-50. It conforms to what, in practice, has been a common tool of consumer protection in Michigan. Comment, *supra* note 27, at 953.

take a voluntary assurance of compliance from the facility.⁷⁷ In addition, the administrator may, in lieu of taking disciplinary action, place a facility or a mechanic on voluntary probation with agreed-upon conditions.⁷⁸

In disciplinary actions, the administrator has the power to issue a cease-and-desist order to restrain a violation of the Act.⁷⁹ He may deny, suspend, or revoke a registration, certificate, or trainee permit when the regulated party violates the Act or is convicted of a felony or misdemeanor as a result of violating the Act, commits an unfair or deceptive practice, violates probation, makes unnecessary or unauthorized repairs, refuses to honor a warranty, allows a customer to sign a document in blank, violates an injunction, or fails to comply with a cease-and-desist order.⁸⁰

Judicial, as well as administrative, remedies are provided for violations of the Act. A person who knowingly breaches a provision of the Act is guilty of a misdemeanor, punishable by fine and/or imprisonment.⁸¹ Imminent violations may be enjoined upon the filing of an action by the Attorney General or county prosecutor, even if there has been no prior administrative proceeding. The court may also suspend or revoke a registration, certificate, or trainee permit.⁸²

Besides deterring subsequent offenses by repair facilities, the Act also provides relief for parties injured by unfair or deceptive practices. Damages may include costs plus attorneys' fees, and willful and flagrant violations are subject to double damages;⁸³

⁷⁷ MICH. MOTOR VEHICLE REPAIR ACT § 257.1327. The voluntary assurance may then be enforced as a contract in circuit court. *Id.* § 257.1327(c). This provision was added to the original bill. H.B. 5047, 77th Leg., Reg. Sess. (1973).

⁷⁸ MICH. MOTOR VEHICLE REPAIR ACT § 257.1326(2)(c).

⁷⁹ *Id.* § 257.1321(1). A temporary order shall issue without a prior hearing upon a finding that public interest will be irreparably harmed by delay, but upon request a hearing on the order must be held within thirty days. *Id.* § 257.1321(2). This provision was added to the original bill. H.B. 5047, 77th Leg., Reg. Sess. § 21 (1973). *See Hearings, Lansing, supra* note 7, at 45.

⁸⁰ MICH. MOTOR VEHICLE REPAIR ACT § 257.1322.

⁸¹ *Id.* § 257.1338 (ninety days and \$1000 for a first offense; one year and \$5000 for subsequent infractions). In the original bill, penalties could be up to ten years in prison and \$25,000 fine, an unusually severe punishment. H.B. 5047, 77th Mich. Leg., Reg. Sess. § 30 (1973). *See Hearings, Lansing, supra* note 7, at 5.

⁸² MICH. MOTOR VEHICLE REPAIR ACT § 257.1323. The offices of the Attorney General and the county prosecutors have traditionally been involved in the area of consumer protection on auto repairs. *See* Comment, *supra* note 27, at 952-67. This provision quite appropriately reinforces whatever efforts are already underway in those offices.

⁸³ MICH. MOTOR VEHICLE REPAIR ACT § 257.1336. By providing for attorneys' fees, the Act removes a substantial barrier to private action in the courts. *See* note 35 and accompanying text *supra*. Furthermore, for purposes of civil liability, a mechanic is considered to be the agent of the repair facility. MICH. MOTOR VEHICLE REPAIR ACT § 257.1337(1).

moreover, the facility or mechanic breaching the Act cannot maintain an action against the customer or assert a garageman's lien.⁸⁴

C. Procedural Rights of Regulated Parties

Mechanics or repair facilities have several opportunities to contest actions of the Secretary of State. Within six months of the effective date of the Act,⁸⁵ the Secretary must promulgate rules⁸⁶ according to the procedures set forth in the Michigan Administrative Procedures Act (APA).⁸⁷ During these rulemaking proceedings, a regulated party may argue against proposed rules of the Secretary.⁸⁸ Among the most important subjects of rulemaking are the definitions of "unfair and deceptive practices" and "minor repair services," the establishment of criteria for determining competency of mechanics,⁸⁹ and the procedure for renewal of registrations and certificates.⁹⁰

In the case of a permanent cease-and-desist order⁹¹ or the denial, suspension, or revocation of a registration, certificate, or permit,⁹² the regulated party is entitled to notice and a hearing, and the APA procedures for "contested cases" apply.⁹³ After a finding of ir-

⁸⁴ *Id.* § 257.1331.

⁸⁵ The law becomes effective on March 30, 1975. Letter from Phillip T. Frangos, Director, Office of Legislative & Review Services, Michigan Department of State, to author, Nov. 27, 1974, on file with the *University of Michigan Journal of Law Reform*.

⁸⁶ MICH. MOTOR VEHICLE REPAIR ACT § 257.1339. The rules become effective six months after promulgation. *Id.* The administrator is then required to inform the affected parties of these rules. *Id.* § 257.1309(f).

⁸⁷ MICH. COMP. LAWS ANN. §§ 24.231-.264 (Supp. 1974). The Act explicitly refers to these APA provisions. MICH. MOTOR VEHICLE REPAIR ACT § 257.1309(h).

⁸⁸ MICH. COMP. LAWS ANN. § 24.241 (Supp. 1974).

⁸⁹ MICH. MOTOR VEHICLE REPAIR ACT § 257.1309(h).

⁹⁰ *Id.* § 257.1320. Whatever rules are adopted regarding renewal, the filing of an application of renewal will have the effect of preserving the status quo until the administrator acts. In other words, if the Department does not act until after the expiration date, the regulated party does not have to suspend operations. Any contrary regulation would be unreasonable. *City of Detroit v. Mashlakjian*, 15 Mich. App. 236, 240-42, 166 N.W.2d 493, 494-95 (1968). MICH. COMP. LAWS ANN. § 24.291(2) (Supp. 1974).

⁹¹ MICH. MOTOR VEHICLE REPAIR ACT § 257.1321(1).

⁹² *Id.* § 257.1322(1).

⁹³ MICH. COMP. LAWS ANN. § 24.203(3) (Supp. 1974). *Nelles v. Superintendent of Public Instruction*, 5 Mich. App. 47, 145 N.W. 2d 795 (1966), *appeal dismissed, cert. denied*, 389 U.S. 9 (1967) (certification of psychologists). For the applicable provisions of the APA involving contested cases see MICH. COMP. LAWS ANN. §§ 24.271-.287 (Supp. 1974). To be consistent with the direct reference to the APA regarding rulemaking as mentioned in note 87 *supra*, and to achieve absolute clarity in such a sensitive area of the law, an explicit reference to the APA might be more desirable. See 2 F. COOPER, STATE ADMINISTRATIVE LAW 487 (1965). For a precedent to such an explicit reference, see MICH. COMP. LAWS ANN. § 691.1204 (Supp. 1974) (Environmental Protection Act of 1970).

reparable harm to the public, the administrator may issue a temporary cease-and-desist order without a hearing, but he is obligated to notify the affected party if possible.⁹⁴

A regulated party has several methods of seeking judicial review of the Secretary's actions. Appropriate provisions of the APA govern review of rulemaking proceedings⁹⁵ and contested cases;⁹⁶ the denial of a certificate by reason of failure on an examination⁹⁷ may also be challenged as arbitrary, malicious, or capricious.⁹⁸ Review may not be sought, however, by a restraining order to bar the Secretary of State from proceeding with administrative sanctions.⁹⁹

III. A COMPARATIVE ANALYSIS OF SIMILAR LEGISLATIVE EFFORTS IN OTHER JURISDICTIONS

Although few states have adopted laws specifically designed to regulate the repair of motor vehicles,¹⁰⁰ there appears to be a trend in the direction of greater regulation. An examination of the existing major programs highlights the shortcomings of the various attempted solutions to the auto repair problem.

⁹⁴ MICH. MOTOR VEHICLE REPAIR ACT § 257.1321(2). This provision is drafted closely along the lines of the restrictions imposed by the APA § 92. The temporary order will become effective when the order so specifies or when a certified copy is served on the respondent, whichever is later. MICH. COMP. LAWS ANN. § 24.292 (Supp. 1974).

⁹⁵ MICH. COMP. LAWS ANN. § 24.264 (Supp. 1974). Rules already established may be challenged by a declaratory judgment action as arbitrary and unreasonable. *Sterling Secret Serv., Inc. v. Dept. of State Police*, 20 Mich. App. 502, 174 N.W.2d 298 (1969).

⁹⁶ MICH. COMP. LAWS ANN. § 24.301-.306 (Supp. 1974). Appeal of the circuit court decision to the court of appeals is by leave and not a matter of right. MICH. GEN. CT. R. 1963, 806.2(1) (1972); *Porter v. Bd. of Optometry*, 41 Mich. App. 150, 199 N.W.2d 666 (1972).

⁹⁷ MICH. MOTOR VEHICLE REPAIR ACT §§ 257.1312, .1313.

⁹⁸ MICH. CONST. art. 6 § 28 (1963) (judicial review of final agency action). In *Evans v. U.S. Rubber*, 379 Mich. 457, 461, 152 N.W.2d 641, 642 (1967), the court held that review was not compulsory, but should be had when the court in its discretion so determined. See *Schuhknecht v. State Plumbing Bd.*, 277 Mich. 183, 269 N.W. 136 (1936).

⁹⁹ *Secretary of State v. Ingham Circuit Judge*, 41 Mich. App. 700, 200 N.W.2d 744 (1972) (involving dealer registration).

¹⁰⁰ Three other states are reporting comprehensive automobile repair shop legislation. The enabling statutes are listed below in chronological order by enactment date: CONN. GEN. STAT. ANN. § 14-51 *et seq.* (1970), *as amended*, (Supp. 1974); CAL. BUS. & PROF. CODE § 9880 *et seq.* (West Supp. 1974); N.Y. VEH. & TRAF. LAW § 398 *et seq.* (McKinney Supp. 1974). Washington, D.C., now has a comprehensive ordinance for regulating repair industries by licensing dealers, examining and licensing supervisory personnel, requiring extensive disclosures, and providing both civil and criminal sanctions. 3 CCH CONSUMERISM 64 (1974). Some states have adopted very limited consumer protection measures. Maryland last year passed a law requiring estimates, invoices, and the return of replaced parts, but little else. MD. ANN. CODE art. 83, §§ 50-52 (Cum. Supp. 1974). Rhode Island licenses only shops which repair bodies and fenders; the statute specifically excludes establishments which repair chassis, seats, motors, transmissions, and other accessories.

A. Connecticut

The Connecticut statute, enacted in 1949 as the earliest effort at state control, is a licensing system which hinges on the requirement that a repairer be a "qualified mechanic," in order to engage in the business of repairing motor vehicles.¹⁰¹ A person may have his license revoked for failing to maintain records and for making false statements to the authorities.¹⁰² In addition, the term, "qualified," has been interpreted broadly by the courts to prohibit practices which are contrary to consumer interests.¹⁰³

B. California

The California Automotive Repair Act of 1971¹⁰⁴ establishes a board of advisers to assist the regulating agency by inquiring into the practices of the repair industry, conferring with the agency director, and making recommendations for rules and regulations.¹⁰⁵ Four of the board's nine members are selected from the automotive repair industry.¹⁰⁶ To regulate the day-to-day operations of the industry, the statute requires repair facilities to itemize invoices, supply written estimates, and return replaced parts.¹⁰⁷ The Chief of the Bureau of Automotive Repair must establish procedures for receiving consumer complaints.¹⁰⁸ Unlike

R.I. GEN. LAWS ANN. § 5-38-1 *et seq.* (Supp. 1974). The superseded repair shop law, which dated back to 1960, was much broader in scope and encompassed other mechanical repairs to motor vehicles. R.I. Pub. L. 1960, ch. 175, § 1 (repealed 1974). *See also* OHIO REV. CODE ANN. § 2911.131 (Page Supp. 1973) (estimates); NEV. REV. STAT. § 487.035 (1973). Many jurisdictions license dealers without controlling repair facilities. *E.g.*, IDAHO CODE § 49-2401 *et seq.* (Supp. 1974). Other states register repair shops, not for consumer protection but for the inspection of cars to keep unsafe vehicles off the highways. *E.g.*, MONT. REV. CODES ANN. § 53-1101 *et seq.* (Supp. 1974). A large number of states are considering comprehensive repair shop programs or improvements to existing statutes. For a compilation of the various bills and the legislative status of each, see 119 CONG. REC. S20646-47 (daily ed. Nov. 16, 1973).

¹⁰¹ CONN. GEN. STAT. ANN. §§ 14-51, 52 (1970); CONN. MOTOR VEH. DEP'T REG. § 14-63-4 (1969).

¹⁰² CONN. GEN. STAT. ANN. § 14-64 (Supp. 1974).

¹⁰³ *J. & E. Auto Serv., Inc. v. Comm'r of Motor Vehicles*, 29 Conn. Supp. 330, 286 A.2d 866 (Super. Ct. 1971), held that a used-car dealer, who, while repairing a customer's car, drove it 546 miles without permission, was not "qualified."

¹⁰⁴ CAL. BUS. & PROF. CODE § 9880 *et seq.* (West Supp. 1974). This statute has become the pattern for the Council of State Governments' model Automotive Repair Dealer Registration Law. COUNCIL OF STATE GOVERNMENTS, AUTOMOTIVE REPAIR DEALER REGISTRATION LAW, in 1971 SUGGESTED STATE LEGISLATION (1972).

¹⁰⁵ CAL. BUS. & PROF. CODE § 9882.13 (West Supp. 1974).

¹⁰⁶ *Id.* § 9882.6.

¹⁰⁷ *Id.* §§ 9884.8.10.

¹⁰⁸ *Id.* § 9882.5.

the Connecticut statute, the California law suspends the use of lien law by facilities which are not registered,¹⁰⁹ in order to protect complaining customers from this form of harassment. Rulemaking¹¹⁰ and invalidation proceedings¹¹¹ are governed by the California procedure act.¹¹²

C. New York

Like the California law and the other earlier acts, the New York Motor Vehicle Repair Shop Registration Act, to take effect on June 1, 1975, regulates only facilities and does not attempt to license mechanics.¹¹³ The law adopts specific procedures for invoices, estimates, and the return of replaced parts,¹¹⁴ but leaves existing lien law intact.¹¹⁵ Although the statute provides for civil penalties¹¹⁶ in addition to criminal sanctions,¹¹⁷ there is no explicit

¹⁰⁹ *Id.* § 9884.16. In this respect the statute is narrower than the Michigan law, which suspends the operation of the lien law for violators as well as nonregistrants. MICH. MOTOR VEHICLE REPAIR ACT § 257.1331.

¹¹⁰ CAL. BUS. & PROF. CODE §§ 9882, 9884.19 (West Supp. 1974).

¹¹¹ *Id.* § 9884.12.

¹¹² CAL. GOV. CODE §§ 11371-11445, 11500-11529 (West 1966).

¹¹³ The New York law is the culmination of fifteen years of effort and numerous proposals for only the certification of mechanics, only the registration of repair shops, and the licensing of both mechanics and repair shops. See *Senate Hearings*, *supra* note 1, at 734-36, 3860-3985; THIRD ANNUAL REPORT, *supra* note 8, at 39-46. The proposals for compulsory licensing of mechanics were dropped because of a lack of training schools in the state. NEW YORK STATE JOINT LEGISLATIVE COMM. ON CONSUMER PROTECTION, SEVENTH ANNUAL REPORT, 1972 N.Y. LEG. DOC. NO. 17, at 16 [hereinafter cited as SEVENTH ANNUAL REPORT]. A bill for the voluntary certification of mechanics was vetoed by Governor Rockefeller because it afforded inadequate protection against fraudulent practices. NEW YORK STATE JOINT LEGISLATIVE COMM. ON CONSUMER PROTECTION, EIGHTH ANNUAL REPORT, 1973 N.Y. LEG. DOC. NO. 20, at 59-61, 66. The Chief of the N.Y. Bureau of Automotive Repairs hopes that the present law will be eventually strengthened by a mechanic certification requirement. *New York Times*, Dec. 8, 1974, at 83, col. 1.

¹¹⁴ N.Y. VEH. & TRAF. LAWS § 398(d) (McKinney Supp. 1974).

¹¹⁵ N.Y. LIEN LAW § 184 (McKinney 1966). Earlier proposals suggested the suspension of lien laws in the area of repair disputes. See NEW YORK STATE JOINT LEGISLATIVE COMM. ON CONSUMER PROTECTION, SIXTH ANNUAL REPORT, 1971 N.Y. LEG. DOC. NO. 15, at 22, 106 [hereinafter cited as SIXTH ANNUAL REPORT]; SEVENTH ANNUAL REPORT, *supra* note 117, at 67. It should be noted that New York courts have long interpreted lien law in favor of the consumer by limiting it to repairs undertaken with the consent of the car owner, see *Hartford Fire Ins. Co. v. Albertson*, 59 Misc.2d 207, 298 N.Y.S.2d 321 (Westchester County Ct. 1969), and to an award for the sum actually and rightfully due and not the sum claimed. *Dinny v. Reeves*, 100 Misc. 316, 165 N.Y.S. 97 (App. Div. 1917).

¹¹⁶ N.Y. VEH. & TRAF. LAW § 398(e)(2) (McKinney Supp. 1974).

¹¹⁷ *Id.* § 398(e)(3).

provision made for private, consumer relief.¹¹⁸ In the event of an unfavorable ruling by the commissioner, the regulated party has an administrative appeal to a board of five persons, two of whom must represent the repair industry.¹¹⁹ While a party has the opportunity for these two hearings, New York has no administrative procedure act to define their operation, nor does the substantive statute provide any explicit guidelines regarding the rights available to a regulated party during a hearing.¹²⁰ Judicial review, on the other hand, is provided by specific cross-reference.¹²¹ The legislature's failure to articulate administrative procedure in this statute is especially noteworthy because it is inconsistent with prior New York practice as evidenced by other statutes regulating businesses and professions.¹²²

¹¹⁸ The absence of an explicit provision for private civil actions must be viewed in light of the preexisting New York consumer protection laws. The attorney general may obtain restitution for money unlawfully received through deceptive acts and practices. N.Y. GEN. BUS. LAW § 349 (McKinney Supp. 1974). The courts have read the statute using the interpretation and application of the Federal Trade Commission Act as a guideline. *Lefkowitz v. Colorado State Christian College of Church of Inner Power, Inc.*, 76 Misc.2d 50, 346 N.Y.S.2d 482 (Sup. Ct. 1973). See note 41 and accompanying text *supra*. See also N.Y. EXEC. LAW § 63(12) (McKinney 1972). "Fraud" has been interpreted broadly, eliminating the scienter requirement. *People v. Federated Radio Corp.*, 244 N.Y. 33, 154 N.E. 655 (1926); *Lefkowitz v. Interstate Tractor Trailer Training, Inc.*, 66 Misc. 2d 678, 321 N.Y.S.2d 147 (Sup. Ct. 1971); *Lefkowitz v. Bevis Indus., Inc.*, 63 Misc.2d 1088, 314 N.Y.S.2d 60 (Sup. Ct. 1970).

¹¹⁹ N.Y. VEH. & TRAF. LAW § 398(f) (McKinney Supp. 1974).

¹²⁰ *Id.* Such vague drafting in a critical area of due process has been especially criticized by Professor Cooper. 2 F. COOPER, STATE ADMINISTRATIVE LAW 487 (1965). An examination of the New York cases reveals that the regulated party at a hearing is entitled to the usual rights to appear in person, to confront and cross-examine witnesses, to subpoena witnesses, to have a finding made on the basis of substantial legal evidence, and to have a stenographic record provided. *Hecht v. Monaghan*, 307 N.Y. 461, 121 N.E.2d 421 (1954); *English v. Tofany*, 32 App. Div. 2d 878, 302 N.Y.S.2d 221 (1969); *245 Elmwood Ave., Inc. v. New York State Liquor Authority*, 14 App. Div. 2d 393, 222 N.Y.S.2d 117 (1961); *Wignall v. Fletcher*, 278 App. Div. 28, 103 N.Y.S.2d 7 (1951). See also *Hornsby v. Allen*, 326 F.2d 605 (5th Cir. 1964) (applicability of federal standards of procedural due process).

¹²¹ N.Y. VEH. & TRAF. LAW § 398(f)(3) (McKinney Supp. 1974). While the scope of review is governed by N.Y. CIV. PRAC. LAW § 7803(4) (McKinney 1963), the area is somewhat confused by the so-called "legal residuum rule," which requires that an agency decision be supported by a residuum of legally admissible evidence as well as by substantial evidence overall. See Note, *The Weight to be Given Hearsay Evidence By Administrative Agencies: The Legal Residuum Rule*, 26 BROOKLYN L. REV. 265 (1960); *Carroll v. Knickerbocker Ice Co.*, 218 N.Y. 435, 113 N.E. 507 (1916); *Erdman v. Ingraham*, 28 App. Div. 2d 5, 280 N.Y.S.2d 865 (1967); *Magee v. New York State Liquor Authority*, 13 App. Div. 2d 649, 214 N.Y.S.2d 1 (1961).

¹²² *E.g.*, ALCO. BEV. CONTROL LAW APPENDIX §§ 52.1-14 (McKinney 1970); N.Y. EDUC. LAW § 6510 (McKinney 1972). In specifying procedural rights, there should be as much legislative concern for garage owners as there has been for liquor store owners.

D. Ontario

A common factor in the statutes discussed previously is the absence of any mechanic certification and training program. Legislative requirements for competent mechanics are not without precedent, however. The Canadian Province of Ontario has a broad program for the apprenticeship and qualification of mechanics.¹²³ No one may repair automobiles as a trade unless he holds a certificate of qualification issued by the Director of Apprenticeship.¹²⁴ If a person does not have a certificate, he must register as an apprentice,¹²⁵ and must undergo an extensive training period of up to 9,000 hours of classroom and on-the-job instruction, the content of which is specified by regulation.¹²⁶ To facilitate such training, Ontario has established its own government trade schools for mechanics.¹²⁷ Violation of the act is punished by fine.¹²⁸

IV. EVALUATION OF THE MICHIGAN STATUTE AND AUTO REPAIR LAWS IN GENERAL

A. An Inherent Conflict: Flexibility and Certainty

Although the power of states to enact laws restricting an occupation is clear,¹²⁹ inherent in any statute providing for administrative control over occupational licensing is a conflict between the need for sufficient flexibility to protect the public, and the demands for clarity and certainty to afford due process of law to the regulated parties.¹³⁰ Any legislation has to strike a balance between overly specific standards which may strait-jacket agency effectiveness and unconfined delegation which may result in arbitrary or excessive action.¹³¹

¹²³ ONT. REV. STAT. c. 24 (1970).

¹²⁴ *Id.* § 10(2).

¹²⁵ *Id.* § 8(1).

¹²⁶ 1 ONT. REV. REGS. No. 40, §§ 5, 6 (1970).

¹²⁷ SIXTH ANNUAL REPORT, *supra* note 115, at 21.

¹²⁸ ONT. REV. STAT. c. 24, § 17(1) (1970).

¹²⁹ States have power to legislate against injurious practices in their internal commercial affairs. *Ferguson v. Skrupa*, 372 U.S. 726 (1963). See generally Wallace, *Occupational Licensing and Certification: Remedies for Denial*, 14 WM. & MARY L. REV. 46 (1972).

¹³⁰ W. GELLHORN & C. BYSE, ADMINISTRATIVE LAW; CASES AND COMMENTS 90 (6th ed. 1974) [hereinafter cited as W. GELLHORN & C. BYSE]; Note, *Due Process Limitations on Occupational Licensing*, 59 VA. L. REV. 1097, 1104 (1973).

¹³¹ W. GELLHORN & C. BYSE, *supra* note 130, at 85-86.

Unquestionably, some restraint on motor vehicle mechanics and repair shops is justified to protect the public.¹³² An injured consumer may obtain relief more easily and expeditiously through an agency than through litigation.¹³³ Not only is litigation costly to the customer, but it is also an ineffective deterrent against the businessman who considers a monetary penalty to be just another operating expense.¹³⁴ In the repair industry, where *laissez faire* has bred deception and incompetence and where traditional countervailing legal mechanisms have been ineffective, the case is strong for agency regulation.

If restraint is justified, measures are still needed to protect against the possible unfairness and arbitrariness arising from the delegation of adjudicative powers to administrative agencies.¹³⁵ To protect adequately against arbitrary power, the legislature must consider using both statutory standards and procedural safeguards.¹³⁶ Although all the statutes mentioned have imprecise standards (for example "accepted trade standards"),¹³⁷ in all cases there is judicial review of agency action and the power of enforcement ultimately lies in the courts.¹³⁸ In the area of licensing of physicians, several decisions have upheld the standard of "unprofessional conduct" as a ground for revocation,¹³⁹ indicating that vagueness of standards will not be a fatal defect for most repair statutes.

While a standard might pass the test of constitutional specificity, it will be counterproductive if it either foments litigation or facilitates abuse of the administrative process. For example, if the Connecticut standard that a mechanic be "qualified"¹⁴⁰ is used to squelch practices which are clearly deceptive, an administrative action based on such a broad standard might be challenged as beyond the scope of delegated authority. If a goal of such a program is the elimination of unnecessary litigation,¹⁴¹ then standards

¹³² See *id.* at 707.

¹³³ W. GELLHORN, *INDIVIDUAL FREEDOM AND GOVERNMENTAL RESTRAINTS* 111 (1968).

¹³⁴ *Id.* at 148.

¹³⁵ See L. JAFFE, *JUDICIAL CONTROL OF ADMINISTRATIVE ACTION* 76-77 (1965).

¹³⁶ K. DAVIS, *ADMINISTRATIVE LAW TEXT* § 2.06, at 41 (3d ed. 1972)

¹³⁷ CAL. BUS. & PROF. CODE § 9884.7(1)(g) (West Supp. 1974)

¹³⁸ See W. GELLHORN & C. BYSE, *supra* note 130, at 103.

¹³⁹ *E.g.*, Moore v. Bd. of Trustees of Carson-Tahoe Hospital, 88 Nev. 207, 495 P.2d 605 (1972), *cert. denied*, 409 U.S. 879 (1972); Bell v. Bd. of Regents of Univ. of State of New York, 295 N.Y. 101, 65 N.E.2d 184 (1946); Bd. of Medical Examiners v. Mintz, 233 Ore. 441, 378 P.2d 945 (1963).

¹⁴⁰ See note 103 and accompanying text *supra*.

¹⁴¹ See notes 148-52 and accompanying text *infra*.

which invite litigation are undesirable. Furthermore, such a broad standard might prompt an irate consumer, who desires to punish a technically qualified repairman beyond the pale of civil remedies, to press for misuse of the harsher administrative sanction of license revocation.¹⁴² If the legislature intends a broad application of licensing remedies, then the statute should so indicate.

If procedural safeguards, rather than precise standards, are to protect against arbitrary power in auto repair statutes, particular care should be taken to ensure that safeguards are adequate, because revocation of a registration or a certification essentially deprives a person of his chosen occupation.¹⁴³ Furthermore, when the rights of persons of modest means and little higher education are at stake, procedural safeguards should be explicit so that the average member of the industry can understand his rights and duties. Equally important, lawyers whom such persons might retain should be able to ascertain all rights and duties with a minimum of research in order to reduce the costs of counselling. Ideally, references should be to an administrative procedure act,¹⁴⁴ or, if there is no such legislation, the rights at a hearing should be enumerated.¹⁴⁵

B. Advantages of Administrative Remedies: Effective and Speedy Relief for the Consumer

1. *Public participation* — To satisfy the consumer effectively, a statute should allow for his direct participation. An effective program cannot rely solely on the limited manpower of an investigatory staff to uncover all types of fraud and deception. It must use the consumer as a source of intelligence. Public information programs, such as that in Michigan,¹⁴⁶ and established lines of com-

¹⁴² In *J & E Auto Serv., Inc. v. Comm'r of Motor Vehicles*, 29 Conn. Supp. 330, 286 A.2d 866 (Super. Ct. 1971), where the repairman drove a customer's car 546 miles without permission—a clear act of conversion—the customer successfully pressed for license revocation on the ground that the repairer was not qualified. If an act of conversion indicates lack of qualifications, then almost any practice can subject the repairman to the drastic retaliation of license revocation. The danger of abuse of the administrative process is a good reason for demanding some statutory specificity.

¹⁴³ 2 F. COOPER, *STATE ADMINISTRATIVE LAW* 491-92 (1965). "The right to work, I had assumed, was the most precious liberty that man possesses." *Barsky v. Bd. of Regents of Univ. of State of New York*, 347 U.S. 442 (1954) (Douglas, J., dissenting).

¹⁴⁴ See notes 93 and 112 and accompanying text *supra*.

¹⁴⁵ See notes 120-22 and accompanying text *supra*.

¹⁴⁶ See text accompanying note 67 *supra*.

munication for tapping the consumers' complaints, as in both Michigan and California,¹⁴⁷ are a necessity for meaningful enforcement.

2. *Alternatives to litigation*—In drafting this type of consumer protection statute, one must recognize the social costs of litigation to the community¹⁴⁸ and the desirability of alternative methods of resolving disputes. In this regard the Michigan statute is especially salutary with its provisions for nondisciplinary mediation¹⁴⁹ and for probation.¹⁵⁰ Though probably less effective in minimizing procedural costs, the New York¹⁵¹ provisions for a double administrative hearing might help to resolve disputes without resort to the courts.¹⁵² Any such nonjudicial remedies can save money for the maligned repairman and the taxpayer, as well as for the injured consumer.

3. *Effective civil litigation*—The Michigan Motor Vehicle Service and Repair Act, with provisions for costs and attorneys' fees and, in some instances, double damages,¹⁵³ gives the consumer a new and powerful weapon with which to recover from the miscreant repairman. Jurisdictions without alternative civil remedies which provide for costs and fees should consider the merits of such an approach. If the customer is to have a free rein¹⁵⁴ to pursue valid claims in court, there must be some abatement of state lien laws such as that achieved in Michigan¹⁵⁵ and California¹⁵⁶. In its zeal to resolve the macroenforcement problem, a statute should not overlook the importance of individual complaints.

¹⁴⁷ See text accompanying notes 67 and 108 *supra*.

¹⁴⁸ *Hearings, Detroit, supra* note 4, at 90-91. For example, attorneys, judges, court reporters, bailiffs, and other persons necessary for court proceedings may constitute a drain on the government treasury.

¹⁴⁹ See text accompanying notes 76 and 77 *supra*.

¹⁵⁰ See text accompanying note 78 *supra*.

¹⁵¹ N.Y. VEH. & TRAF. LAW § 398(f) (McKinney Supp. 1974).

¹⁵² Such informal procedures also provide an inexpensive alternative to the administrative procedures which must necessarily be elaborate to safeguard against arbitrary action. See notes 135-36 and accompanying text *supra*.

¹⁵³ See text accompanying note 83 *supra*.

¹⁵⁴ In this regard, however, one must recognize the countervailing consideration of nuisance suits by consumers. See note 142 *supra*.

¹⁵⁵ MICH. MOTOR VEHICLE REPAIR ACT § 257.1331.

¹⁵⁶ CAL. BUS. & PROF. CODE § 9884.16 (West Supp. 1974). The advantage of such provisions is that the consumer need wait for only an administrative determination, rather than a judicial decree, before regaining his vehicle.

*C. A Possible Drawback: Reduction of
Competition in the Repair Industry*

1. *Barriers to entry*—Any occupational licensing statute faces the risk of unnecessarily limiting competition in the affected industry.¹⁵⁷ Auto repair legislation should be designed to protect the public without strengthening the economic position of the regulated parties.¹⁵⁸ If emphasis is placed on eradicating incompetence by creating extravagantly high examination requirements, for example, an undue barrier to entry into the occupation may result and therefore exacerbate the mechanic shortage.¹⁵⁹

The differences in approach between a mechanic certification statute and a repair facility registration statute elucidate this danger. The Michigan scheme, with its examination requirements,¹⁶⁰ is more susceptible than a registration system to charges of restricting the movement of labor. Some potential harm is mitigated by the Act's provisions for the employment of noncertified mechanics under the supervision of certified personnel¹⁶¹ and for the education of trainees who desire to become certified as specialty or master mechanics.¹⁶² The use of specialty categories rather than a single mechanic standard will also tend to keep barriers from rising by enabling those with narrow areas of expertise to gain certification without further training. An offsetting benefit of a certification program may be increased prestige for the occupation and its ensuing attractiveness to young people.

In contrast, the registration statutes attempt to avoid erecting barriers to entry and at the same time protect the public from incompetence by revoking the registrations of the marginally skilled rather than excluding them originally by examination.¹⁶³ If

¹⁵⁷ See Note, *Due Process Limitations in Occupational Licensing*, 59, VA. L. REV. 1097, 1098 (1973).

¹⁵⁸ See W. GELLHORN, *supra* note 133, at 145.

¹⁵⁹ Cf. *id.* at 117.

¹⁶⁰ MICH. MOTOR VEHICLE REPAIR ACT § 257.1313.

¹⁶¹ *Id.* § 257.1305.

¹⁶² *Id.* § 257.1313. To minimize the possible discriminatory effects of a written examination on minority and ethnic groups, the tests should be administered by tape in several available languages. See New York Times, Mar. 19, 1973, at 19, col. 1. Attention should be given to this problem in rulemaking proceedings.

¹⁶³ CAL. BUS. & PROF. CODE § 9884.7(1)(e) (West Supp. 1974) (gross negligence); N.Y. VEH. & TRAF. LAW § 398(e)(1)(h) (McKinney Supp. 1974) (grossly negligent on two or more occasions). Michigan, by contrast, has no such ground for revocation of a certification or registration. MICH. MOTOR VEHICLE REPAIR ACT § 257.1322.

the statute is to rely on a process of weeding out all the undesirables, it must provide an efficient means of accomplishing this end. Anything less would result in a pool of residual incompetence in the industry.¹⁶⁴ Provided that no unreasonable restraints are imposed on the regulated occupations, it seems more beneficial to the public to screen out incompetence from the start, by an examination, rather than to wait for it to surface on a case-by-case basis in revocation proceedings.¹⁶⁵

Another unnecessary barrier to entry might arise from conditioning employment on an extraneous factor. Statutes should avoid the prerequisite of "good moral character"¹⁶⁶ as evidenced by prior record of observance of the law. In addition, entrusting the judgment of an applicant's character to an administrator is a questionable practice.¹⁶⁷ Wisely, the measures in the original Michigan bill for good moral character¹⁶⁸ and the absence of a conviction record¹⁶⁹ were dropped in the amendment process.¹⁷⁰

2. *Danger of industry control*—Occupational licensing programs also face the risk of falling under industry domination.¹⁷¹ It is in the interest of the industry to protect its members by gaining control over the methods of entry and exit. New York, which has an adjudicative board of appeal composed of members of the industry,¹⁷² might be vulnerable to undue industry influence. In

¹⁶⁴ For the same reason, an examination provision should not contain a grandfather clause. See note 56 *supra*.

¹⁶⁵ A recent staff report of the Federal Trade Commission has evaluated two methods of regulation of television repairmen—one in Louisiana, the other in California. 3 CCH CONSUMERISM 244-45 (1975). Under the Louisiana licensing system, a board, composed mostly of practicing repairmen, regulates entry into the industry by an examination. LA. REV. STAT. ANN. §37:2301 *et seq.* (1974). By contrast, the California registration system places no restrictions on entry but provides for investigation of fraudulent repairs. CAL. BUS. & PROF. CODE § 9800 *et seq.* (West Supp. 1974). The staff found that the prices in New Orleans were higher and more variable than those in San Francisco, while the incidence of parts fraud was lower in California than in Louisiana. 3 CCH CONSUMERISM 244 (1975). The Michigan statute contains elements of both programs. It has an examination provision but no industry-controlled board. See notes 171-75 and accompanying text *infra*. At the same time it adopts antifraud investigatory measures similar to the California program. See note 68 *supra*.

¹⁶⁶ *E.g.*, N.Y. VEH. & TRAF. LAW § 398(e)(1)(d) (McKinney Supp. 1974) (good character).

¹⁶⁷ See W. GELLHORN, *supra* note 133, at 128-29.

¹⁶⁸ H.B. 5047, 77th Mich. Leg. Reg. Sess. § 10(e) (1973).

¹⁶⁹ *Id.* § 10(b).

¹⁷⁰ *Hearings, Ann Arbor, supra* note 57, at 39; *Hearings, Lansing, supra* note 7, at 45.

¹⁷¹ See W. GELLHORN, *supra* note 133, at 140-43. The recent FTC staff report on the regulation of television repairs (see note 165 *supra*) recommends that statutes for regulating the auto repair industry should not contain provisions which allow the industry to regulate itself. 3 CCH CONSUMERISM 245 (1975).

¹⁷² N.Y. VEH. & TRAF. LAW § 398(f) (McKinney Supp. 1974).

California, the advisory board is less directly involved in registration,¹⁷³ but it may still be influential and a target for industry domination.¹⁷⁴ Avoiding any board composed of the industry members, the Michigan program calls for the exclusive direction of the Secretary of State.¹⁷⁵ A possible disadvantage of this latter approach is a lack of experience and technical know-how in the regulating authority. To balance these countervailing considerations, the provision for an advisory panel, in which mechanics are a distinct minority, might satisfy the need for expertise and independence.

D. Neglected Factors and Some Suggested Solutions

1. *Shortage of skilled mechanics*—No one state can alleviate the nationwide labor shortage in the automotive repair trade; the labor force is too mobile.¹⁷⁶ This problem involves not only educational institutions, but also organized labor and the automotive manufacturing industry. Several bills have been introduced in Congress for a federal grant-in-aid system financing the bulk of training costs coupled with incentives to establish apprenticeship and training programs.¹⁷⁷ But until the repair industry loses its reputation as a grimy, low-wage profession, the shortage of competent personnel is likely to continue. As long as there is a personnel shortage, the marginally skilled will tend to thrive and any effort to eradicate incompetence will be more difficult.¹⁷⁸

2. *Methods of compensation*—Statutes generally avoid treating the underlying economic incentives for dishonest and shoddy prac-

¹⁷³ CAL. BUS. & PROF. CODE §§ 9882.6-13 (West Supp. 1974). See notes 105-06 and accompanying text *supra*.

¹⁷⁴ For the constitutional limitations on subjecting a licensee to industry review, see *Gibson v. Berryhill*, 411 U.S. 564 (1973).

¹⁷⁵ A major provision of an alternative bill called for a board of nine persons, five of whom were to be mechanics, to supervise examinations and act as an appeal body for the administrator's decisions. S.B. 687, 77th Mich. Leg., Reg. Sess. §§ 3, 5, 13 (1973). This principle of board control was adopted in Rhode Island, where a five-person commission, with two representatives from the Auto Body Association, has the power to deny, suspend, or revoke body-repair licenses and is subject only to judicial review. R.I. GEN. LAWS ANN. § 5-38-1 *et seq.* (Supp. 1974).

¹⁷⁶ For example, Ontario loses many of its best mechanics, who are trained by the government, because their talents are in demand elsewhere. SIXTH ANNUAL REPORT, *supra* note 115, at 21.

¹⁷⁷ *E.g.*, H.R. 265, 92d Cong., 1st Sess. (1971) (motor Vehicle Mechanic Licensing Act); S. 1950, 93d Cong., 1st Sess. (1973).

¹⁷⁸ See note 17 and accompanying text *supra*.

tices caused by the flat-rate and commission methods of compensation,¹⁷⁹ and concentrate on deterring the illegal manifestations of those pay systems. Wisconsin has attempted to control the system by requiring shops to reveal actual repair times on bills whenever flat-rate time is also stated, and, in any case, to disclose actual time whenever the customer so requests.¹⁸⁰ If this requirement successfully induces consumer awareness of compensation methods, it could lead to less use of flat-rate compensation, at least for the field of retail repairs, and greater price competition among the repair facilities.

3. *Higher costs*—New procedures requiring invoices, estimates, and waivers might lead to higher repair bills because of an increase in paperwork.¹⁸¹ Conceivably, because of the need for prior approval of estimates, mechanics will require more shop space to store disassembled vehicles between the time of diagnosis and the time of consent to proceed with repairs. The requirement that certified mechanics inspect all trainee work will also add to costs.

Another price rise might be especially alarming in a period of already rapidly increasing costs.¹⁸² Cost reduction, however, has not been one of the goals of the Michigan statute,¹⁸³ and in totaling costs one must account for the savings which result when unnecessary second repairs are avoided.¹⁸⁴

4. *Minor repairs exception*—The Act's exception for minor repairs¹⁸⁵ may eventually develop into a loophole in the protection afforded by the law. Minor repairs have been a significant area of deception.¹⁸⁶ A possible solution is suggested by the California

¹⁷⁹ See notes 22-24 and accompanying text *supra*.

¹⁸⁰ 2 CCH CONSUMERISM 366 (1973). The publisher of one of the flat-rate manuals, *Chilton's*, has for the first time dropped its dollar cost computations based on recommended hourly labor charges. 2 CCH CONSUMERISM 562 (1974). The entire compensation problem is linked with the automobile warranty system, which has been under study by the Federal Trade Commission. FEDERAL TRADE COMMISSION *supra* note 23, at 124-25.

¹⁸¹ *Hearings, Grand Rapids, supra* note 2, at 9-11, 26-27.

¹⁸² See note 12 and accompanying text *supra*.

¹⁸³ *Hearings, Grand Rapids, supra* note 2, at 27. Instead, the aim of the bill is to ensure that customers get what they pay for. *Id.*

¹⁸⁴ Most customers would probably prefer a more expensive repair job if it were reliable. *Hearings, Ann Arbor, supra* note 57, at 5.

¹⁸⁵ See note 65 and accompanying text *supra*.

¹⁸⁶ See note 7 *supra*.

statute which places minor repair services under the law's control if they involve a high incidence of fraud or deception.¹⁸⁷ Perhaps the implementing statute should provide the regulatory agency with discretion to define the coverage of the act.

5. *Administrative delay and incompetence*—The granting or renewal of a license should not depend on the vagaries of administrative congestion or neglect. Worthy candidates should be assured the right to pursue their occupations without delay if the agency fails to act promptly on a legitimate request for a registration, certification, or permit. Renewals should be automatic if the registrant has submitted an application and if the agency has not charged an infraction of the Act. In Michigan, partial relief from delay comes from the APA¹⁸⁸ or from the courts on a case-by-case basis.¹⁸⁹ Legislatures drafting statutes might, as an alternative, consider a "waiver" provision analogous to that in the Federal Water Pollution Control Act.¹⁹⁰

¹⁸⁷ CAL BUS. & PROF. CODE § 9880.1(f) (West Supp. 1974). This California provision does not accomplish the objective because changing tires is designated by statute to be "minor." The director is merely barred from designating other unnamed services as minor if they involve a high incidence of fraud. The business of changing tires is documented as being prone to fraudulent practices, and perhaps it should not be so excluded. *See, e.g., Hearings, Lansing, supra* note 7, at 61. The minor repairs loophole may be especially dangerous if the jurisdiction lacks a general deceptive acts and practices statute similar to N.Y. GEN. BUS. LAW § 349 (McKinney Supp. 1974).

¹⁸⁸ The act states:

When a licensee makes timely and sufficient application for renewal the existing license does not expire until a decision on the application is finally made by an agency,

MICH. COMP. LAWS ANN. § 24.291(2) (Supp. 1974)

¹⁸⁹ *E.g. Skinner v. Argentine Township Bd.*, 238 Mich. 533, 213 N.W. 680 (1927), upheld the use of mandamus proceedings to challenge an allegedly arbitrary refusal to license.

¹⁹⁰ 33 U.S.C.A. § 1341(a)(1) (1974). Under such a system, the failure of the agency to act would result in the automatic grant or renewal of a certification or registration.

V. CONCLUSION

If properly administered, the Motor Vehicle Service and Repair Act can become an effective tool for protecting the consumer through a comprehensive scheme of mechanic certification, repair facility registration, and customer remedies. This type of statute, which seeks to afford a degree of consumer protection by restricting the occupational freedom of small businessmen, must, on one hand, deter deception and restore property by speedy and simple means, and, on the other hand, safeguard the livelihoods of regulated parties. In choosing among schemes for mechanic examination and programs of repair facility registration, legislatures must consider the side-effects of reduction in competition and industry control, as well as possible increases in repair costs which may result from industry regulation.

-A. Russell Localio