

Date of Hearing: March 26, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Ed Chau, Chair
AB 949 (Medina) – As Introduced February 20, 2019

SUBJECT: Unsafe used tires: installation

SUMMARY: This bill would prohibit an automotive repair dealer from installing an unsafe used tire, as specified, on a motor vehicle for use on a highway. Specifically, **this bill would:**

- 1) Prohibit an automotive repair dealer from installing an unsafe used tire, as defined, on a motor vehicle for use on a highway.
- 2) Define “unsafe used tire” to mean a used tire to which any of the following criteria applies:
 - The tire is worn to two thirty-seconds of one inch tread depth or less on any area of the tread.
 - The tire has any damage exposing the reinforcing plies of the tire, including cuts, cracks, punctures, scrapes, or wear.
 - The tire has any repair in the tread shoulder or belt edge area.
 - The tire has a puncture that has not been both sealed or patched on the inside and repaired with a cured rubber stem through to the outside.
 - The tire has repair to the sidewall or bead area.
 - The tire has a puncture repair of damage larger than one-fourth of one inch.
 - The tire shows evidence of prior use of a temporary tire sealant to repair a puncture or damage to the tire without evidence of a subsequent proper repair.
 - The tire has a defaced or removed United States Department of Transportation tire identification number.
 - The tire has any inner liner damage or bead damage.
 - The tire shows indication of internal separation, such as bulges or local areas of irregular tread wear indicating possible tread or belt separation.
- 3) Exempt a tire mounted on a wheel or rim that is temporarily removed from a vehicle and reinstalled on the same vehicle from the prohibition above.

EXISTING LAW:

- 1) Provides, under federal law, that no motor vehicle shall be operated on any tire that:

- has body ply or belt material exposed through the tread or sidewall, has any tread or sidewall separation, is flat or has an audible leak, or has a cut to the extent that the ply or belt material is exposed; or
 - has a tread groove pattern depth of less than two thirty-seconds of an inch when measured in a major tread groove, as specified. (49 C.F.R. Sec. 393.75.)
- 2) Provides, pursuant to the Automotive Repair Act (ARA), for the licensure and regulation of automotive repair dealers by the Bureau of Automotive Repair. (Bus. & Prof. Sec. 9880 et seq.)
 - 3) Provides that, subject to exceptions, any violation of the ARA is a misdemeanor and punishable by a fine not exceeding \$1,000, or by imprisonment not exceeding six months. (Bus. & Prof. Sec. 9889.2.)
 - 4) Defines the “repair of motor vehicles” to mean all maintenance of and repairs to motor vehicles performed by an automotive repair dealer, including automotive body repair work, but excluding those repairs made pursuant to a commercial business agreements and roadside services. (Bus. & Prof. Sec. 9880.1.)
 - 5) Defines “automotive repair dealer” to mean a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles. (Bus. & Prof. Sec. 9880.1.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of the bill:** This bill seeks to enhance consumer protection by prohibiting the installation of unsafe used tires on vehicles. This bill is sponsored by the U.S. Tire Manufacturers Association (USTMA).
- 2) **Author’s statement:** According to the author, “[C]onsumers purchasing used tires are often not aware of the actual condition of the tires they are purchasing, particularly if there is no visible damage. There is nothing worse than damaged tires on wet roads. Tire manufacturers share my concern as well as federal and state highway safety officials, safety advocates, the automotive industry, and others that our nation must do more to mitigate the risk of vehicle crashes. AB 949 is a small yet important step to increasing the safety of the drivers on the road by prohibiting the installation of unsafe used tires.”
- 3) **Tire safety is paramount:** The National Highway Traffic Safety Administration (NHTSA) notes that in order for a vehicle to handle safely and to use fuel economically, the vehicle’s tires should be in good condition. Good condition requires regular monitoring and timely maintenance of all tires on the vehicle. Nevertheless, it is common to find vehicles on the road running on one or more improperly inflated tires, tires with inadequate tread depth, or improperly repaired tires. Inadequate tread depth can also result in tire blowout. Tire-related events such as tire failure or blowout resulting from tire deficiencies or other factors are risky and often add to the likelihood of auto accidents, injury, and death. According to a 2003 NHTSA report, an estimated 414 fatalities, 10,275 non-fatal injuries, and 78,392 crashes

occur annually due to flat tires or blowouts before tire pressure monitoring systems were installed in vehicles. (NHTSA, *Tire-Related Factors in the Pre-Crash Phase* (April 2012).)

Federal law prohibits the driving on tires that have a tread groove pattern depth less than two thirty-seconds of an inch, or driving on tires that have body ply or belt material exposed through the tread or sidewall, have any tread or sidewall separation, are flat or have an audible leak, or have a cut to the extent that the ply or belt material is exposed. (49 C.F.R. Sec. 393.75.) This bill would prohibit an automotive repair dealer from installing used tires on vehicles that are deemed “unsafe” according to these same federal standards (and a few additional standards discussed in Comment 4, below).

USTMA, sponsor of this bill, notes that more than 30 million used tires are available for sale nationally each year. Quality used tires generally have from 40% to 70% of the tread remaining, and present a short-term solution that can save consumers hundreds of dollars. That being said, federal law prohibits *driving* on unsafe tires, but does not prohibit the *installation* of unsafe tires. This framework places the onus of ensuring tire safety completely on the vehicle driver. By prohibiting the *installation* of unsafe used tires, AB 949 would also allocate the duty of ensuring tire safety onto licensed automotive repair dealers.

As a practical matter, this bill would draw a bright line regarding the used tires that are safe for installation and the used tires that are not. This should increase safety for drivers and the community alike. Additionally, and as a matter of public policy, this bill would shift part of the responsibility for tire safety onto licensed automotive repair dealers, who are arguably more knowledgeable than the average consumer about vehicle maintenance and repair, and therefore in a much better position to judge the suitability of used tires for automotive purposes.

- 4) **Bill is necessarily more protective of consumers than federal safety standards:** As noted in Comment 3, above, this bill is largely modeled after federal tire safety standards, which prohibit the driving on tires that have a tread groove pattern depth less than two thirty-seconds of an inch, or driving on tires that have body ply or belt material exposed through the tread or sidewall, have any tread or sidewall separation, are flat or have an audible leak, or have a cut to the extent that the ply or belt material is exposed. (49 C.F.R. Sec. 393.75.) This bill, however, goes beyond the federal standards, and includes in the definition of “unsafe used tire” the following elements:

- The tire has any repair in the tread shoulder or belt edge area.
- The tire has had a repair to the sidewall or bead area.
- The tire shows evidence of prior use of a temporary tire sealant to repair a puncture or damage to the tire without evidence of a subsequent proper repair.
- The tire has any inner linear damage or bead damage.

As noted by the sponsor in their tire care and service manual:

Once tires are applied to a vehicle and put into service (this includes spare tires), they are considered “used.” The purpose of this information is to address the potential risk associated with the installation of used tires that have uncertain or unknown history of

use, maintenance or storage conditions. Such tires may have damage that could eventually lead to tire failure. This information pertains to used tires installed as replacement tires or as equipped on a used vehicle. [...]

Not all tire damage that can lead to tire failure is outwardly visible. For instance, improper repairs or damage to a tire innerliner can only be observed by inspecting the inside of the tire, demounted from the wheel. A qualified tire service professional should inspect the internal and external condition of the used tires prior to application. In the case of a used vehicle purchased by a consumer, the only way to determine the condition of its tires is to have them demounted by a tire service professional for the same type of inspection. (USTMA, *Care and Service of Passenger and Light Truck Tires* found at <https://www.ustires.org/sites/default/files/CareAndService_PassengerAndLightTruckTires.pdf> [as of Mar. 18, 2019].)

Given the fact that tires, by their very nature, become less safe with time and miles driven, these additional requirements will arguably help ensure that consumers are purchasing a product that will last them a certain amount of time and will not become unsafe almost immediately after installation. Staff additionally notes that this bill contains an exception for tires mounted on a wheel or rim that is temporarily removed from a vehicle and reinstalled on the same vehicle. This exception should allow for emergency tire repair.

- 5) **Distinction between sale of unsafe used tires and installation of unsafe used tires:** This bill would prohibit the installation of unsafe used tires on vehicles, but would not prohibit the sale of these same tires. In other words, the legislation does not ban all used tire sales, but targets the installation of used tires that have specific, well-established, unsafe conditions. This distinction should arguably allow for the continued operation and growth of the rubber recycling industry. Among others purposes, used tires are commonly used for swings, race track barriers, and garden pots, and the rubber recycling industry is growing. According to USTMA:

The turnaround in U.S. scrap tire consumption is astonishing: In 1990, only 11 [%] of annually generated scrap tires were consumed in beneficial end use markets. The rest went into stockpiles. For many stakeholders, including USTMA, this a priority issue.

By 2017, end-use markets consumed 81.4 [%] of scrap tires generated in the U.S.

The top market categories for scrap tires are tire derived fuel, ground rubber and civil engineering applications. (U.S. Tire Manufacturers, *Scrap Tire Markets*, <<https://www.ustires.org/scrap-tire-markets>> [as of March 13, 2019].)

Keith Sacks, vice president of Rubberecycle, manufacturer of rubber mulch and residential surfacing products made from scrap tires, explains that more products both in and out of the recreation market are growing as the industry continues to expand both in commercial and residential areas. “Tire recycling technology has really made the process easy and efficient and is taking off and being used in many different ways. [...] Recycled tires are being used for playground safety, landscaping, horse tracks, obstacle courses and even as bullet traps for ballistic courses. And many states have recently started to look at recycled tires as a way to repave roads.” (American Recycler News, *Rubber recycling: a growing industry* (May 2016).)

This bill, which would allow for the sale of used tires that although unsafe for driving, remain suitable for non-automotive purposes, would simultaneously serve to better protect consumers from unsafe driving conditions while leaving the rubber recycling industry intact.

- 6) **Prior legislation:** AB 873 (Jones, Ch. 849, Stats. 2016) deleted the current list of minor repairs exempted from registration with the Bureau of Automotive Repair, effective January 1, 2018, and required the Director of the Department of Consumer Affairs, prior to January 1, 2018, to adopt regulations defining a new list; excluded propulsive batteries from the current list of minor services; and excluded motor clubs and operators of tow trucks from the definition of roadside services.

AB 1665 (Jones, 2014) would have deleted “repairing tires” and “changing tires” from the list of repair services exempt from registration as an automotive repair dealer under the BAR. This bill was vetoed Governor Brown who expressed that further review and input from stakeholders was needed.

SB 202 (Galgiani, 2013) would have deleted repairing and changing tires from those exclusion lists. It would have also excluded tire services provided by or on behalf of a motor club holding a specified certificate of authority or an operator of a tow truck owned or operated by a person or entity possessing a valid motor carrier permit from the definitions of “repair of motor vehicles” and “automotive technician.” This bill was held on the Assembly Appropriations Suspense File.

AB 2065 (Galgiani, 2012) was essentially the same as SB 202. This bill was held on the Assembly Appropriations Committee Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

U.S. Tire Manufacturers Association (sponsor)

Opposition

None on file

Analysis Prepared by: Nichole Rapier / P. & C.P. / (916) 319-2200