

SCRS Analysis of NCOIL 2009 Crash Parts Model

Proposed Model Act Regarding Motor Vehicle Crash Parts and Repair

To be considered by the NCOIL Property-Casualty Insurance Committee on July 11, 2009.

Sponsored for discussion by Committee Chair Rep. Charles Curtiss (TN)

Based on the current language provided in the proposed model, and for reasons outlined below, SCRS opposes the current model language and urges the NCOIL Committee to not vote in favor of this model as written.

3,A **“An automotive repair facility shall provide a customer with an itemized written estimate for all parts and labor necessary for a specific job. The estimate shall indicate whether a replacement crash part will be new, used, salvaged, or rebuild, including whether a part will be aftermarket or OEM.”**

- SCRS understands the purpose of NCOIL is to help legislators make informed decisions on insurance issues that affect their constituents, improve the quality of insurance regulation, and to assert the prerogative of legislators in making state policy when it comes to insurance. Automotive repair facilities are not, by virtue, a part of the business of insurance and are regulated by different entities. SCRS believes that including requirements for automotive repair facilities in the same regulation as those that address insurance regulation blur the lines between two non-related industries and dilutes enforcement for the consumer.
- SCRS does believe that legislation requiring that all labor, parts and materials necessary to effect the repair are to be reimbursed for under the insurance policy would be beneficial protection for the consumer.

3,B,ii **“If aftermarket crash parts will be used, page one of the estimate must:...disclose that the car company will not warrant aftermarket crash parts.”**

- SCRS supports disclosure to the consumer on what parts are being used and who will support the warranty of such parts if subsequently required.

3,C **“The written estimate shall include notice to the consumer that the insurer has authorized use of the parts listed on the estimate.”**

- SCRS believes that this language is not appropriate. Insurers can not authorize for parts or labor to be performed on a repair. The only party that can authorize any part to be used is the vehicle owner. Additionally, we question if this requirement is for the insurance estimate or the collision repair facility's estimate? If it is for the Collision Repair Facility, it is inappropriate to have a requirement which has them speak or inform

on behalf of the insurer. The collision repairer's obligation should solely be to perform the repairs to consumer's specification and authorization.

- SCRS does believe that the written estimate should clearly reflect the parts to be used in the repair process.

3,D **“The written estimate also shall disclose any auto repair or replacement work that would be done by someone other than an employee of the repair facility. The repair facility shall be responsible for any service provided by such an outside party.”**

- SCRS supports disclosure to the consumer on where the vehicle will be repaired in the event that the insurer elects the option to take control of the repair.
- Again, SCRS believes that while the consumer should authorize where the vehicle is being repaired, and informed if any outside services are being utilized, that the regulation of the repair facility is not appropriate to be combined in model legislation designed to better regulate the business of insurance.

3,I **“Upon customer request after completion of the work, the repair facility shall show the customer a copy of each invoice for parts used.”**

- We would reiterate the points made above regarding regulation of collision repair in a model for insurance regulation. That said,
- SCRS supports transparency to the consumer, and we believe the customer should be entitled to a written final document that reflects all work performed and parts used, invoiced out in a clear manner.
- SCRS strongly opposes any requirement to provide internal business documents to outside sources. Invoices received from parts providers often include account numbers, business to business discounts or profit margins, and other detailed information that is not appropriate to share outside of the business.

4,A **“No insurer shall require the use of aftermarket crash parts in the repair of an insured's motor vehicle unless the insurer does all of the following:”**

- Insurers do not specifically “require” parts usage in their policies. An insurer may specify that they will only reimburse for the cost of an aftermarket part, while giving the vehicle owner the option to pay the difference. SCRS believes this language would not effectively curb that practice with the current language.
- Additionally, SCRS believes that an insurer only has the ability to define their limits of protection through their policy contract. We believe that it should be defined that a third party claimant would not be subject to an insurer's desired parts and the language should be concise in clarifying the difference between policy limitations on insureds vs. claimants.

- 4,A,i **“discloses in writing, when a consumer initiates or renews a comprehensive or collision insurance policy, that the insurer requires use of aftermarket crash parts.”**
- SCRS supports clear and concise consumer disclosure about the terms of the auto policy and how the coverage will apply in the event of a loss.
 - Most auto policies do not “require” the use of aftermarket parts, but limit their liability to the cost of those parts. SCRS believes the use of the word “require” will open an easy loophole around this language.
- 4,A,ii **“warrants that aftermarket crash parts are at least equal to corresponding OEM crash parts in terms of kind, quality, safety, fit, and performance. Replacement crash parts certified to meet the standards set by an American National Standards Institute (ANSI)-recognized entity may be deemed equivalent.”**
- SCRS believes that an insurer cannot warrant that an aftermarket crash part is equal or corresponding to OEM, nor can an insurer require use of, or authorize any parts; they can only make allowances for certain parts if their policy provides for a limitation of liability specifically to those parts. It could, and should, be required that if an allowance is made for an aftermarket part by an insurer, and authorized by their insured, that they must provide a written warranty directly accepting liability for any failure or issue that may arise from the quality, safety, fit or performance of the part. SCRS believes this language should also be applicable to the use of reconditioned or used parts as well.
- 4,A,iii **“Pay the cost of any modification to the parts that may become necessary to effect the repair”**
- SCRS supports legislation that requires all labor and material necessary to affect the repair are paid for.
- 4,B **Notwithstanding Section 4(A), an insurer cannot require use of aftermarket crash parts for new motor vehicles purchased from a vehicle dealer 1) if the date of loss occurred within 12 months of the vehicle purchase or 2) for the duration of the vehicle’s original car-company warranty.**
- Again, SCRS believes this language would not effectively address the problem because insurance policies do not require use of parts; they only address what their limits of liability are. An insurer can pay for the price of an Aftermarket part and then advise that they don’t require that aftermarket is used as long as the consumer pays the difference in price.
- 4,D **“Any insurer that fails to comply with provisions of this section will be subject to penalties under [insert state] Unfair Trade Practices law.”**

- In most states the penalties identified in the Unfair Trade Practices Law are designed for enforcement pending proof of the infraction being a common business occurrence identified through market conduct surveys. SCRS believes this model would be ineffective without these actions being measurable and penalized on individual occurrences, and not just after proof of habitual practice.

5 **“All aftermarket and OEM crash parts manufactured on or after [insert date] when supplied by a repair facility shall carry sufficient permanent, non-removable identification so as to indicate the manufacturer. The identification shall be accessible to the greatest extent possible after installation.”**

- SCRS supports consumer protection and transparency which permanent identification would provide.
- SCRS would suggest that additional language be added to also include the same requirement for remanufactured parts, and that the identification indicate not only the remanufacturer, but the extent of damage to the remanufactured parts and the source of the original part.

6 **A. Whenever a motor vehicle collision or comprehensive loss shall have been suffered by an insured, no insurer providing collision or comprehensive coverage therefore shall require that repairs be made to such vehicle in a particular place or by a particular concern.**

B. In processing any such claim, the insurer shall not, unless expressly requested by the insured, recommend or suggest repairs be made to such vehicle in a particular place or shop or by a particular concern.”

C. “Insurers who engage in a pattern of violations of Section 6(A) and (B) will be subject to penalties under [insert state] Unfair Trade Practices law.”

- SCRS is strictly opposed to any insurer, insurance agent or representative referring a vehicle owner to a particular collision repair facility once the vehicle owner has selected a repair facility. The selection of a collision repair facility should not be interfered with by an insurer, insurance agent or representative unless specifically requested by the vehicle owner. Once the vehicle owner has selected a collision repair facility, any attempt to discourage the vehicle owner from utilizing that collision repair facility for the sole purpose of steering work, should entail significant penalties.
- SCRS additionally believes that the pattern of practice outlined in most states’ Unfair Trade Practices is not acceptable enforcement to promote carriers to abide by the law. If the law identifies the practice as illegal, it should be illegal on every account, not as an undefined “pattern of practice.” SCRS believes there should be a penalty involved in each violation that increases if the violations continue.