

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

Proposed Model Act Regarding Motor Vehicle Crash Parts and Repair

This working draft incorporates changes that the Committee made to the proposed model act during an October 1 Committee conference call, as well as indicates proposed amendments that remain for Committee review.

To be considered by the NCOIL Property-Casualty Insurance Committee via conference call on October 7, 2009.

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

Interested-party amendments are signified throughout the text by the following acronyms:

- Assurant: Assurant Inc.
Calhoun: Assem. Nancy Calhoun, NY
CCC: CCC Information Systems
CAPA: Certified Automotive Parts Association
SCRS: Society of Collision Repair Specialists

Proposed additions indicated by bold underline.
Proposed deletions indicated by strikethrough.

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Section 1. Summary

This Act applies to personal lines motor vehicle insurance policies and protects consumers filing auto body damage claims with their insurers. The model requires disclosure and consent of items covered in the loss prior to crash part repair or replacement; establishes conditions whereby insurers may require cover use of aftermarket crash parts, including provisions regarding new vehicles and those under original car-company warranty; mandates permanent, transparent identification of crash parts; provides for consumer choice in selection of an auto repair facility, and promotes accountability, among other things. (SCRS)

Section 2. Definitions

A. "Aftermarket crash part" means a replacement crash part manufactured by an entity other than the original equipment manufacturer (OEM), including a crash part that has been certified to meet standards set by an American National Standards Institute (ANSI)-recognized entity.

- B. “Crash part” means any replacement part made of sheet metal, plastic fiberglass, or a similar material that generally constitutes the exterior of a motor vehicle. This includes outer panels, hoods, fenders, doors, grilles, trunk lids, exterior lighting, reflective devices, and exterior coverings of bumpers, but does not include windows or hubcaps.
- C. “Insurer” means an insurance company and/or any person authorized to represent the insurer with respect to a claim and who is acting within the scope of the person’s authority.
- D. “Original equipment manufacturer (OEM) crash part” means a replacement crash part manufactured by a car company, under its own name, for motor vehicles that the car company manufactures or distributes under its own name.
- E. “Repair facility” means a motor vehicle dealer, garage, body shop, or other commercial entity that undertakes the repair or replacement of those parts that generally constitute the exterior of a motor vehicle.

Section 3. Disclosure and Prior Consent¹

- 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, certified, salvaged, or rebuilt, including whether a part will be aftermarket or OEM.
- B. The estimate must:
 - i. identify the manufacturer or distributor of each crash part
 - ii. disclose whether the part has a warranty
 - iii. include the following notice in at least 12-point type:
 “Installing a part, other than a part described on the written estimate, without prior approval from the customer is unlawful. If you suspect an illegal installation of parts by your auto repair facility, call the [insert state agency] at [insert toll-free telephone number].”
- C. The repair facility shall be responsible for any service provided by outside parties with whom they contract.

***STAFF NOTE:** Legislators on the October 1 call deleted a subsection C that would have required a written estimate to disclose that an insurer had authorized parts listed on the estimate. Section 3 has been re-lettered as appropriate.*

- E. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer.

(SCRS)
 E. ~~No work shall be done and no charges shall accrue before~~ **Only the consumer can provide** authorization **outlining the nature of work performed, or** to proceed **with repairs to their vehicle** ~~is obtained from the customer.~~ **A customer may not designate a representative of an insurer involved in a claim that includes the motor vehicle being repaired to authorize approval of the repairs.**

- F. If it is determined, once a repair facility has begun work on the motor vehicle, that the estimated price is insufficient to complete the job, then no charge shall be made for work done on the job or for parts supplied that are in excess of the estimated price until the customer gives oral or written consent to such additional work and parts.

[Drafting Note: A state that authorizes oral consent may wish to require that a dealer indicate on the work order the date, time, name of person authorizing the additional repairs, and telephone number called, if any, as well as details regarding the additional parts and labor and additional cost. The state also may wish to require that on the final invoice the repair facility obtain the customer's written signature or initials acknowledging the notice and oral consent.]

- i. A customer may designate another person to authorize work or parts supplied in excess of the estimated price, if the designation is made in writing at the time that the customer signs the initial authorization to proceed.
- ii. A designee shall not be a representative of the automotive repair facility or of an insurer involved in a claim that includes the motor vehicle being repaired.

(SCRS)

~~F. If it is determined, once a repair facility has begun work on the motor vehicle, that the estimated price is insufficient to complete the job, then no charge shall be made for work done on the job or for parts supplied that are in excess of the estimated price until the customer gives oral or written consent to such additional work and parts.~~

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- ~~i. A customer may designate another person to authorize work or parts supplied in excess of the estimated price, if the designation is made in writing at the time that the customer signs the initial authorization to proceed.~~
- ~~ii. A designee shall not be a representative of the automotive repair facility or of an insurer involved in a claim that includes the motor vehicle being repaired.~~

- G. Upon completion of the work, the repair facility shall provide the customer with a final written invoice that describes separately all labor and parts used. The invoice shall indicate whether a replacement crash part was aftermarket, OEM, salvaged, or rebuilt. If aftermarket crash parts were used, the invoice shall identify the manufacturer or distributor of each aftermarket part.

(CAPA)

G. Upon completion of the work, the repair facility shall provide the customer with a final written invoice that describes separately all labor and parts used. The invoice shall indicate whether a replacement crash part was aftermarket, **certified**, OEM, salvaged, or rebuilt. ~~If aftermarket crash parts were used, the invoice shall identify the manufacturer or distributor of each aftermarket part.~~

(SCRS)

G. Upon completion of the work, the ~~repair facility insurer~~ shall provide the customer with a final written ~~invoice document~~ that describes separately all labor and parts ~~used that were covered under the policy~~. The ~~invoice document~~ shall indicate whether a replacement crash part was aftermarket, OEM, salvaged, or rebuilt. If aftermarket crash parts were used, the ~~invoice document~~ shall identify the ~~manufacturer or distributor of each aftermarket part~~ limitation of liability in the policy that allowed for the coverage of such part.

H. In addition, page one of the final written ~~invoice document~~ shall include the disclosure language set forth in Section 3(B)(iii). **(SCRS)**

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

(CAPA) (SCRS)

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

J. Any person who fails to comply with provisions of this section is guilty of a misdemeanor punishable by a fine of no more than \$1,000, jail of no more than six months, or a combination of both fine and penalty.

Section 4. Use of Non-OEM Crash Parts²

A. No insurer shall ~~require limit their policy to~~ the use of aftermarket crash parts in the ~~repair coverage~~ of an insured's motor vehicle unless the insurer does all of the following: **(SCRS)**

i. discloses in writing, when a consumer initiates or renews a comprehensive or collision insurance policy, that the insurer ~~requires~~ limits reimbursement of the loss to the use of aftermarket crash parts **(SCRS)**

(CAPA)

~~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~~

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)

ii. directly warrants ~~that the kind, quality, safety, fit and performance of~~ aftermarket used or remanufactured crash parts, and warrants that the parts covered are ~~at least equal to corresponding OEM crash parts in terms of kind, quality, safety, fit, and performance.~~ ~~R~~replacement crash parts certified to meet the standards set by an American National Standards Institute (ANSI)-recognized entity ~~may be deemed equivalent.~~

- iii. pays the cost of any modifications to the parts that may become necessary to effect the repair
- iv. identifies to the consumer, in a written estimate prior to the repair, 1) any aftermarket crash part that will be used and 2) that the manufacturer and/or distributor of the aftermarket part warrants it, rather than the original car company

B. Notwithstanding Section 4(A), an insurer cannot ~~require~~ **limit their policy coverage to the** 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. (SCRS)

(CAPA)

~~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.~~

C. The insurer shall offer consumers who initiate or renew their comprehensive or collision insurance coverage the option of paying a higher deductible in exchange for exclusive use of OEM crash parts should the consumer file a damage claim with the insurer.

(CAPA)

~~C. The insurer shall offer consumers who initiate or renew their comprehensive or collision insurance coverage the option of paying a higher deductible in exchange for exclusive use of OEM crash parts should the consumer file a damage claim with the insurer.~~

[Drafting Note: As an alternative, a state may wish to require that an insurer allow a consumer to pay the difference between an OEM and non-OEM crash part, should the consumer prefer a more expensive part than the one that the insurer agrees to cover.]

(CAPA)

~~*[Drafting Note: As an alternative, a state may wish to require that an insurer allow a consumer to pay the difference between an OEM and non-OEM crash part, should the consumer prefer a more expensive part than the one that the insurer agrees to cover.]*~~

D. Any insurer that fails to comply with provisions of this section will be subject to penalties under *[insert state]* Unfair Trade Practices law.

(SCRS)

D. Any insurer that fails to comply with provisions of this section **in the settlement of a claim** will be subject to penalties under *[insert state]* **law and punishable by a fine of \$XX.00, jail of no more than six months, or a combination of both fine and penalty** ~~Unfair Trade Practices law.~~

(Assurant)

E. Antique Automobiles and Collectible/Modified Automobiles are exempt from the provisions of this Section 4.

- 1. For purposes of this section, an “Antique Automobile” means a motor vehicle that is fifteen (15) or more years old and a) used for exhibitions, club activities, parades, or other functions of public interest or b) not used for general transportation.**
- 2. For purposes of this section, a “Collectible/Modified Automobile” means a motor vehicle that is a) used for exhibitions, club activities, parades, or other functions of public interest or b) not used for general transportation and that is i) not mass-produced or ii) modified or built with any customized or non-original part(s).**

[Drafting Note: Vehicle age provisions should correspond to a state’s statutory age classification of antique automobiles that may vary, for example, between 15-30 years old.]

Section 5. Identification of Crash Parts

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.

(CAPA)

- A.** 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.
- B.** **Where an insurer has specified the use of crash parts certified to meet standards set by an ANSI-recognized entity, those parts shall also be identified with a unique serial number. A portion of this identification containing the serial number shall be transferable to the repair order as proof of use.**

(SCRS)

All aftermarket, ~~and OEM~~ **or remanufactured** 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 **or remanufacturer**. The identification shall be accessible to the greatest extent possible after installation.

Section 6. Choice of Repair Facility³

- 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.

(SCRS)

- A. Whenever a motor vehicle collision or comprehensive loss shall have been suffered by an insured **or claimant**, no insurer, **insurance agent, or representative of the insurer** providing collision, ~~or comprehensive,~~ **or liability** coverage ~~therefore shall require that repairs be made to such vehicle in a particular place or by a particular concern~~ **refer 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 will entail significant penalties.

- B. In processing any such claim **(other than a claim solely involving window glass) (Calhoun)**, 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.

(SCRS)

~~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)

C. **An insurer, and a representative of that insurer, that fails to comply with the provisions of 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 is guilty of a misdemeanor punishable by a fine of no more than \$1,000, jail of no more than six months, or a combination of both fine and penalty. Repeated offenses of such practice will escalate in treble fines, penalties, or a combination of both.**

Section 7. Severability

If any section, paragraph, sentence, clause, phrase, or any part of this Act passed is declared invalid, the remaining sections, paragraphs, sentences, clauses, phrases, or parts thereof shall be in no manner affected and shall remain in full force and effect.

Section 8. Effective Date

This Act shall take effect on *[insert date]*, applying to personal lines motor vehicle insurance policies either written to be effective or renewed on or after nine (9) months from the effective date of the bill.

¹Based on California Senate Bill 427, as amended on April 2, 2009.

²Based, in part, on California Senate Bill 350, as amended on March 31, 2009, which codifies already existing California regulatory procedure.

³Based on New York State Insurance law, Section 2610.

* * * * *

The following interested party submitted general comments following the 2009 NCOIL Summer Meeting in lieu of markups to specific language in the draft model:

State Farm Mutual Automobile Insurance Company

- cannot endorse any provision in the proposed model act
- says the model gives only “passing and insufficient support” for certified crash parts, while “unreasonably and in an impractical fashion restricts use of aftermarket parts”
- says that State Farm supported a related model that NCOIL considered but did not adopt several years ago
- believes the current proposed model act is anti-consumer
- believes that Section 6 in the model, regarding auto body steering, would deny rights of commercial free speech and “generate a legal challenge for any state that adopts that provision”
- supports a related 1987 NAIC disclosure model act