

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

Proposed Model Act Regarding Motor Vehicle Crash Parts and Repair

*To be considered by the NCOIL Property-Casualty Insurance Committee at the 2009 Annual Meeting.
Sponsored for discussion by Committee Chair Rep. Charles Curtiss (TN)*

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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 prior to crash part repair or replacement; establishes conditions whereby insurers may require 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.

Section 2. Definitions

- A. "Aftermarket crash part" means a replacement crash part manufactured or distributed by an entity other than the original equipment manufacturer (OEM).
- B. "Crash part" means any 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 or distributed 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, salvaged, or rebuilt, including whether a part will be aftermarket or OEM.
- B. If aftermarket crash parts will be used, page one of the estimate must:
- i. identify the manufacturer or distributor of each aftermarket crash part.
 - ii. disclose that the car company will not warrant aftermarket crash parts.
 - 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 written estimate shall include notice to the consumer that the insurer has authorized use of the parts listed on the estimate.
- 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.
- E. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer.
- 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.
- 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.
- H. In addition, page one of the final written invoice shall include the disclosure language set forth in Section 3(B)(iii).

- 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 the use of aftermarket crash parts in the repair of an insured's motor vehicle unless the insurer does all of the following:
 - 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.
 - 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 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.

[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.

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.

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.
- 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.

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.