

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
PROPERTY-CASUALTY INSURANCE COMMITTEE  
BOSTON, MASSACHUSETTS  
JULY 8, 2010  
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Boston Park Plaza Hotel in Boston, MA, on Thursday, July 8, 2010, at 10:30 a.m.

Sen. Ruth Teichman of Kansas, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Greg Wren, AL	Rep. Don Flanders, NH
Rep. Barry Hyde, AR	Assem. Nancy Calhoun, NY
Sen. Ralph Hudgens, GA	Sen. William Larkin, Jr., NY
Sen. Vi Simpson, IN	Sen. James Seward, NY
Rep. Ron Crimm, KY	Sen. Keith Faber, OH
Rep. Robert Damron, KY	Rep. Brian Kennedy, RI
Rep. Steven Riggs, KY	Rep. Charles Curtiss, TN
Rep. Barb Byrum, MI	Rep. Larry Taylor, TX
Rep. Marc Corriveau, MI	Rep. Hubert Vo, TX
Sen. Alan Sanborn, MI	Rep. Kathy Keenan, VT
Rep. George Keiser, ND	Rep. Gini Milkey, VT
Sen. Jerry Klein, ND	

Other legislators present were:

Rep. Steve Fontana, CT	Sen. Gerald Malloy, SC
Rep. Pat Patterson, FL	Sen. Dave Thomas, SC
Rep. Ed Butler, NH	Sen. Ann Cummings, VT
Rep. Harry Cato, SC	

Also in attendance were:

Susan Nolan, NCOIL Executive Director  
Candace Thorson, NCOIL Deputy Executive Director  
Mike Humphreys, NCOIL Director of State-Federal Relations  
Jordan Estey, NCOIL Director of Legislative Affairs & Education

#### MINUTES

After a motion made and seconded, the Committee voted unanimously to approve the minutes of its March 5 and 6, 2010, meetings in Isle of Palms, South Carolina.

#### PROPOSED AFTERMARKET CRASH PARTS MODEL ACT

Sen. Teichman said the Committee would consider a proposed *Model Act Regarding Motor Vehicle Crash Parts and Repair* that would promote transparency in part repair and replacement, as well as address safety and other issues related to certification of aftermarket crash parts. She said that time constraints at the Spring Meeting had prevented the Committee from finalizing the model, which she

noted, would be the first time that NCOIL would adopt legislation on the issue. Sen. Teichman also said that legislators had developed the proposed model during conference calls and special meetings beginning in fall 2009.

### SECTION 3: DISCLOSURE AND PRIOR CONSENT PENALTIES

Ms. Thorson overviewed Section 3 of the draft model law, which the Committee had reviewed and amended at the Spring Meeting, and said it would impose requirements on auto body repairers and would set standards for disclosure and consumers' prior consent. She said Rep. Keiser was officially proposing an amendment that he had first mentioned in the spring.

Rep. Keiser explained that his proposal would revise Section 3 (I) to give a person or repair facility 30 days to remedy a violation. He said that violators who then knowingly failed to comply would be subject to misdemeanor penalties.

After Committee discussion regarding the importance of "knowingly," legislators adopted Rep. Keiser's amendment via unanimous voice vote.

### SECTION 4: USE OF NON-OEM CRASH PARTS

Ms. Thorson reported that Section 4 of the proposed model law would set conditions for insurer specification of non-OEM parts, as well as require certain insurer disclosures. She said there were several proposed amendments to Section 4.

#### *REP. KENNEDY EQUIVALENCY AMENDMENT*

Rep. Kennedy said his amendment would address the equivalency of certified aftermarket and original equipment manufacturer (OEM) crash parts and would add the following sentence to Section 4.A.ii:

Replacement crash parts certified to meet the standards set by an American National Standards Institute (ANSI)-recognized entity may be deemed equivalent to corresponding OEM crash parts.

Rep. Kennedy said that ANSI was a well-respected organization and that any ANSI-recognized entity should be qualified to deem the equivalency of crash parts.

### OPPONENTS

George Cook of the Alliance of Automobile Manufacturers (AAM) continued that no certifying entity had proven itself consistently capable of verifying aftermarket part quality. He asserted that reverse-engineered aftermarket crash parts could not be of "like kind and quality" to car-company options.

Mr. Cook also said that although use of an aftermarket crash part would not completely invalidate a car-company warranty, the car company would not be responsible for repairing or replacing the non-OEM part. He commented that warranties on aftermarket parts could be difficult to enforce.

Steven Regan of the Society of Collision Repair Specialists (SCRS) said that Rep. Kennedy's "may be deemed equivalent" language was ambiguous and could create legal uncertainty. He offered

general opposition to the proposed NCOIL model, saying that it would impose undue burdens on body shops and, in some cases, would be less restrictive than state law.

Mr. Regan then suggested that the National Highway Traffic Safety Administration (NHTSA) was not adequately exercising its authority to recall aftermarket crash parts.

Mr. Regan also said that body shops can distinguish between good and poor quality crash parts, regardless of certification status.

#### SUPPORTERS

Jack Gillis of the Certified Automotive Parts Association (CAPA), an ANSI-recognized organization, endorsed Rep. Kennedy's Section 4 equivalency amendment, asserting among other things that it would encourage an open market, promote fair pricing of parts, and support quality standards.

Mr. Gillis responded to Committee questions regarding part recalls, saying that car companies used their sales records to identify and notify consumers affected by an OEM-part defect. Regarding certified parts, he said that CAPA notified auto body shops, using a unique identification number on CAPA-certified products, when CAPA had de-accredited a part. He said the body shops were then responsible for telling consumers.

In response to a question from Sen. Teichman, Mr. Gillis said that the Kennedy amendment was important because OEM parts were considered the de facto standard for crash-part quality and so state law needed to establish that certified parts could be functionally equivalent.

In response to Committee comments regarding the definition of "equivalent," Mr. Gillis said that two parts could function similarly, or equivalently, but they could not be exactly the same, or equal. He asserted that third-party certification was critical to determining which crash parts were truly equivalent.

John Ashenfelter of State Farm Insurance Companies issued qualified support Rep. Kennedy's Section 4 equivalency amendment, urging the Committee to change the "may be deemed equivalent" standard to "shall be deemed." Speaking to the model generally, however, Mr. Ashenfelter said that State Farm ultimately saw no need for an NCOIL model, since the Illinois Supreme Court already had determined that State Farm could use non-OEM crash parts to restore a car to its "pre-loss condition."

#### OTHER COMMENTS

Eileen Sottile of the LKQ Corporation disputed assertions by opponents of the Kennedy equivalency amendment that non-OEM parts had inferior warranties. She said that U.S.-based companies handled recalls of LKQ aftermarket parts and that both certified and uncertified aftermarkets could be of "like kind and quality" to OEMs. She stated that 12 percent of LKQ parts were returned by body shops, including two to three percent as a result of part defects, and that LKQ had its own quality standards.

Sen. Simpson expressed concern that Rep. Kennedy's amendment would make a state liable if a certified aftermarket crash parts was found to be defective, since Rep. Kennedy's language, she said, amounted to state endorsement of certification. She encouraged Rep. Kennedy to reconsider his proposal.

*REP. KEISER WARRANTY AMENDMENT*

Rep. Keiser offered an alternative to Rep. Kennedy's equivalency amendment that Rep. Keiser said would move away from the broader aftermarket versus OEM part debate and focus more closely on the relationship between an insured and his/her insurer. He commented that this was the original purpose of Section 4.

Rep. Keiser said his amendment—which like Rep. Kennedy's would revise Section 4.A.ii—would require an insurer to make certain that a specified aftermarket crash part carried a manufacturer or distributor warranty that equaled or exceeded the car company's warranty for the crash part in terms of kind, quality, safety, fit, and performance.

Rep. Kennedy then withdrew his equivalency amendment and supported Rep. Keiser's alternative. Sen. Teichman said the Committee would discuss the Keiser warranty amendment at the November Annual Meeting, when more time would be available.

*SEN. FABER INSURER SPECIFICATION AMENDMENT*

Sen. Faber suggested revising Section 4.A.i so that insurers would have flexibility to use parts beyond the type specified in the insurance policy. He said an insurer should have freedom to use an OEM part that the insurer found superior to a part in the specified aftermarket part industry. He explained that his amendment would make insurers disclose that they "may specify" a non-OEM part, rather than always would specify.

Following brief Committee discussion, legislators adopted Sen. Faber's draft amendment via unanimous voice vote.

Sen. Teichman said the Committee would resume its consideration of the proposed aftermarket crash parts model at the Annual Meeting.

**ADJOURNMENT**

There being no further business, the meeting adjourned at 12:00 p.m.