

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

Proposed Model Act Regarding Motor Vehicle Crash Parts and Repair

To be considered by the Property-Casualty Insurance Committee on March 6, 2011.

Proposed model sponsored for discussion by Rep. Charles Curtiss (TN)

Proposed amendments sponsored by Rep. Barb Byrum (MI) unless otherwise indicated

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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 ~~specify use of~~ **limit their payment to the cost of** aftermarket crash parts; and mandates permanent, transparent identification of crash parts.

Section 2. Definitions

- A. “Aftermarket crash part” means a replacement crash part manufactured by an entity other than the original equipment manufacturer (OEM).
- ~~B. “Certified aftermarket crash part” means a replacement crash part that has been certified by an American National Standards Institute (ANSI) recognized entity approved to maintain quality standards for competitive crash parts and is identified by a unique serial number.~~
- C. “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.
- D. “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.
- E. “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.
- F. “Recycled crash part” means a part removed from a vehicle, **which was previously involved in a loss,** and placed for resale.

- G. “Remanufactured crash part” means a recycled part that has been reconditioned, refurbished, or restored to its original condition or appearance for use on another vehicle.
- H. “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 Consent

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 OEM, aftermarket, ~~certified~~, recycled, or remanufactured.

B. The estimate must:

- i. identify the manufacturer or distributor of each crash part
- ii. disclose whether the part has a **manufacturer’s** warranty
- iii. include the following notice in at least 12-point type:
“Installing a part, other than a part described on the **repair facility’s** written estimate, without prior approval from the customer **is may be** 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.

D. No work shall be done and no charges **other than those permitted by law for storage or to protect against damage to the vehicle, persons or property around the vehicle, or the environment** shall accrue before authorization to proceed is obtained from the customer.

E. 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. No employee, agent, or representative of a customer’s insurance company shall be designated to authorize the scope or method of repairs or the types of parts used to effectuate the repairs unless the insurance company has agreed in writing prior to repairs to guarantee the quality and safety of the parts and repairs and assume all liability related thereto.**

- F. Upon completion of the work, the repair facility shall provide the customer with a final written document that describes separately all labor and parts used. The document shall indicate whether a replacement crash part was OEM, aftermarket, ~~certified~~, recycled, or remanufactured. For any crash part used, the document shall identify the manufacturer or distributor of the part and any identifying number, if available.
- G. In addition, the final written document shall include the disclosure language set forth in Section 3(B)(iii).
- ~~H. Upon customer request after completion of the work, the repair facility shall show the customer a copy of each invoice for parts used. Any discount or pricing information could be deleted from the invoice.~~
- I. Any person who knowingly fails to comply with provisions of this section within 30 days of a complaint being filed with the *[insert state]* insurance department is guilty of a misdemeanor punishable by a fine of no more than *[insert applicable state amount]*, jail of no more than *[insert applicable state length of sentence]*, or a combination of both fine and penalty.

Section 4. Use of Non-OEM Crash Parts

- A. No insurer shall ~~specify the use~~ **limit its payment to the cost** 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, in the issuance ~~or~~ **and at each** renewal of a comprehensive or collision insurance policy, that the insurer may ~~specify the use~~ **limit its payment to the cost** of aftermarket, ~~certified~~, recycled, or remanufactured crash parts

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- ii. ensures that the specified aftermarket crash parts are warranted **by the manufacturer or distributor to equal or exceed the car company's warranty for the crash part. in terms of kind, quality, safety, fit, and performance** **Certified aftermarket crash parts shall be presumed to be capable of restoring a vehicle to its pre-loss condition.**

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- ~~ii. ensures that the specified aftermarket crash parts are warranted in terms of kind, quality, safety, fit, and performance~~
- ii. warrants for a period of ten (10) years or as long as the insured owns the vehicle, whichever is longer, that each aftermarket, recycled, or remanufactured crash part used in a repair is free of defects in terms of fit, finish, performance, and corrosion resistance**

- iii. identifies to the consumer, in a written estimate prior to the repair, 1) any aftermarket crash part that will be used and 2) that **such parts are not warranted by the manufacturer and/or distributor of the aftermarket part warrants it, rather than the original car company**
- iv. obtains the written consent of the consumer to use such parts prior to repairs and after all of the disclosures required by this section have been made**

- B. Any person who knowingly fails to comply with provisions of this section will be subject to penalties under *[insert applicable state law]* and punishable by a fine of *[insert applicable state amount]*, jail of no more than *[insert applicable state length of sentence]*, or a combination of both fine and penalty.
- C. Antique Automobiles and Collectible/Modified Automobiles are exempt from the provisions of this Section 4.
- i. For purposes of this section, an “Antique Automobile” means a motor vehicle that is *[insert applicable state requirement]* years old and a) used for exhibitions, club activities, parades, or other functions of public interest or b) not used for general transportation.
 - ii. 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 a) not mass-produced or b) modified or built with any customized or non-original part(s).

Section 5. Applicability to First-Party Claims Only

Nothing in this Act shall be construed to limit the right of a third-party claimant to recover the full cost of having his, her, or its vehicle repaired with new, OEM parts regardless of the age or prior condition of the vehicle. Any attempt by an insurance company to limit its payment of the cost of repairing a third-party claimant’s vehicle to the cost of aftermarket, recycled, or remanufactured parts without the express written consent of the third-party claimant after disclosure of his, her, or its right to recover the cost of a new, OEM part shall be deemed an unfair and deceptive claims practice and subject any person who attempts to limit the insurer’s payment to the cost of aftermarket, recycled, or remanufactured parts to penalties under *[insert applicable state law]* and punishable by a fine of *[insert applicable state amount]*, jail of no more than *[insert applicable state length of sentence]*, or a combination of both fine and penalty.

Section ~~56~~. Identification of Crash Parts

All aftermarket ~~and OEM~~ crash parts manufactured on or after *[insert date]* when supplied ~~by~~**to** a repair facility shall carry sufficient permanent, non-removable identification so as to indicate the **name, address, and the U.S.-based agent of the** manufacturer. The identification shall be accessible to the greatest extent possible after installation. A unique serial number, if available, shall be transferred to the repair order to allow for identification of the manufacturer.

Section ~~67~~. 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 ~~78~~. 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.

Proposed additions to draft model indicated by **bold underline**.
Proposed deletions from draft model indicated by ~~strikethrough~~.