

**NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)**

**Proposed Model Act Regarding Motor Vehicle Crash Parts and Repair**

*This draft incorporates changes made by the Property-Casualty Insurance Committee during conference calls on October 1, 7, 15, and 20, 2009.*

To be considered by the Property-Casualty Insurance Committee on March 5, 2010.  
*Sponsored for discussion by Rep. Charles Curtiss (TN)*

*The following interested parties submitted proposed amendments to the model act:*

**Assurant:** Assurant Inc.  
**CCC:** CCC Information Systems  
**CAPA:** Certified Automotive Parts Association  
**SCRS:** Society of Collision Repair Specialists

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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; 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 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. “Refurbished crash part” means a replacement crash part that has been taken from a motor vehicle and reconditioned for use on a vehicle of the same make and model.

***STAFF NOTE: See Addendum One (end of document) for related interested-party amendment.***

- G. “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.
- H. “Salvaged crash part” means a replacement crash part that has been taken from a motor vehicle for use on a vehicle of the same make and model.

***STAFF NOTE: See Addendum One (end of document) for related interested-party amendment.***

### **Section 3. Disclosure and Prior Consent<sup>1</sup>**

- 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, salvaged, or refurbished.
- 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.
- D. No work shall be done and no charges 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.
- 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, salvaged, or refurbished. 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 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<sup>2</sup>**

- A. No insurer shall specify 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, in the issuance or renewal of a comprehensive or collision insurance policy, that the insurer specifies use of aftermarket, certified, salvaged, or refurbished crash parts
  - ii. ensures that the specified aftermarket crash parts are warranted 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 to corresponding OEM crash parts.** (Rep. Brian Kennedy, RI)

**STAFF NOTE:** *The above language appeared in earlier drafts of the model act. During an October 20, 2009, conference call, legislators inadvertently deleted the language when they created a definition of "certified aftermarket crash part" that they believed would encompass the same meaning.*

- iii. pays the cost of any modifications to parts that may become necessary to effect the repair

**STAFF NOTE:** *See Addendum Two (end of document) for related proposed amendment.*

- 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. 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. 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. A unique serial number, if available, shall be transferred to the repair order to allow for identification of the manufacturer.

**Section 6. Choice of Repair Facility<sup>3</sup>**

- 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.

**STAFF NOTE: Legislators have reserved discussion of Section 6 until the Spring Meeting. See Addendum Three (end of model) for Section 6 amendments proposed by interested parties.**

**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.

DRAFT

<sup>1</sup>*Based on California Senate Bill 427, as amended on April 2, 2009.*

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

<sup>3</sup>*Based on New York State Insurance law, Section 2610.*

**ADDENDUM ONE: Draft Amendments to Section 2 of Proposed  
Model Act Regarding Motor Vehicle Crash Parts and Repair**

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*For consideration by the Property-Casualty Insurance Committee on March 5, 2010.*

*(pages 1 and 2 in proposed model)*

**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. "Refurbished crash part" means a replacement crash part that has been taken from a motor vehicle and reconditioned for use on a vehicle of the same make and model.

**Automotive Recyclers Association (ARA)**

- F. ~~"Refurbished crash part" means a replacement crash part that has been taken from a motor vehicle and reconditioned for use on a vehicle of the same make and model.~~ **"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.**

- G. "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.

- H. "Salvaged crash part" means a replacement crash part that has been taken from a motor vehicle for use on a vehicle of the same make and model.

**Automotive Recyclers Association (ARA)**

- H. ~~"Salvaged crash part" means a replacement crash part that has been taken from a motor vehicle for use on a vehicle of the same make and model.~~ **"Recycled crash part" means a part removed from a vehicle and placed for resale.**

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

**ADDENDUM TWO:** Draft Amendments to Section 4 of Proposed  
*Model Act Regarding Motor Vehicle Crash Parts and Repair*

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*For consideration by the Property-Casualty Insurance Committee on March 5, 2010.*

*(pages 3 and 4 in proposed model)*

**Section 4. Use of Non-OEM Crash Parts**

A. No insurer shall specify 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, in the issuance or renewal of a comprehensive or collision insurance policy, that the insurer specifies use of aftermarket crash parts
- ii. ensures that the specified aftermarket crash parts are warranted in terms of kind, quality, safety, fit, and performance
- iii. pays the cost of any modifications to parts that may become necessary to effect the repair

**(Committee Discussion)**

~~iii. pays the cost of any modifications to 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

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Proposed deletions from draft model indicated by ~~strikethrough~~.

**ADDENDUM THREE:** Draft Amendments to Section 6 of Proposed  
*Model Act Regarding Motor Vehicle Crash Parts and Repair*

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*For consideration by the Property-Casualty Insurance Committee on March 5, 2010.*

*(page 4 in proposed model)*

Amendments proposed by the **Society of Collision Repair Specialists (SCRS)**

**Section 6. Choice of Repair Facility**

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.

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, 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.

~~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.

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.**

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