

**Society of Collision Repair Specialists (SCRS) markup of NCOIL proposed model:
Proposed Model Act Regarding Motor Vehicle Crash Parts and Repair**

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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 Comment:** SCRS understands the purpose of NCOIL is to help legislators make informed decisions on insurance issues that affect their constituents, improve the quality of insurance regulation, and to assert the prerogative of legislators in making state policy when it comes to insurance. Automotive repair facilities are not, by virtue, a part of the business of insurance and are regulated by different entities. SCRS believes that including requirements for automotive repair facilities in the same regulation as those that address insurance regulation, and language that ties to the Unfair Claims Practice acts which governs insurers actions, blur the lines between two non-related industries and dilutes enforcement for the consumer. SCRS opposes the inclusion of requirements for collision repair facilities in this bill.*

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 Consent

- A. An **automotive repair facility insurer** shall provide a customer with an itemized written estimate for all parts and labor necessary for a specific job **that are covered under the insurance policy. The estimate shall also identify any necessary part, labor, or charges that are specifically not covered under the policy as well.** The estimate shall indicate whether **the coverage for** a replacement crash part will be new, used, salvaged, or rebuilt, including whether a part will be aftermarket or OEM.
- B. If **policy coverage limits reimbursement to** aftermarket crash parts ~~will be used~~, page one of the **insurance** 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 **provided by the insurer** shall include notice to the consumer that the insurer has authorized ~~use~~ **reimbursement** of the parts listed on the estimate, **and reference the policy provision that limits liability to the use of such parts.**

SCRS Comment: The specific wording is very important to how this bill will in fact affect consumers. Current auto policies do not “require” the use of parts, and insurers do not authorize “use” of parts or repair processes; in fact, most insurance estimates specifically state “this is not an authorization to repair” in the estimate body. Language that state an insurer cannot “authorize” or “require” the use of a part seems to be good consumer protection, but would do little to provide a forum for enforcement.

- D. **In the event the insurer is assuming the responsibility of the repair,** the written estimate also shall disclose **where** any auto repair or replacement work ~~that~~ **performed and shall be responsible for any service provided by any such party** ~~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.~~

SCRS Comment: An insurer cannot identify on the estimate where a vehicle will be repaired, or which vendors are to be used in the event that not all work is performed within a shop, so long as the consumer has the right to choose their repair provider they wish to use. Some insurers do have programs in effect where the policy holder can leave the vehicle with the insurer and they assume responsibility for the repair process. In this event, the insurer should have an obligation to inform the consumer where the vehicle is being worked on, and should be required to assume all liability for any and all work performed.

E. ~~No work shall be done and no charges shall accrue before~~ **Only the consumer can provide authorization outlining the nature of work preformed, 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 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 Comment: SCRS does not oppose consumer protection legislation that ensures the consumer is both aware of, and in approval of, work performed and charges accrued while repairing their property. That said, SCRS does feel that language of this nature is out of place when combined with language regulating the insurers coverage of a loss and unnecessarily addresses unrelated issues that convolute the regulation and enforcement of the overall purpose of the bill.

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).

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

SCRS Comment: This language has also been considered on several occasions at the state level and has not been successful in passing during those attempts. Collision repair businesses sell repair services, parts and labor to consumers. Invoices obtained through the repair process are internal business documents that contain confidential and sometimes sensitive information such as discounts from wholesale vendors, profit margins, detailed company information, and other information that the consumer is not necessarily entitled to. The final detailed repair order from the repair facility outlines the work performed and should correspond to the repair/replacement found on the vehicle.

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 Parts

- 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:
- 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.
 - 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** ~~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 Comment: SCRS believes that an insurer does not have the authority to warrant that an aftermarket crash part is equal or corresponding to OEM, nor do insurers require use of, or authorize any parts; they can only make allowances for certain parts if their policy provides for a limitation of liability specifically to those parts. It could,

and should, be required that if an allowance is made for an aftermarket part by an insurer, and authorized by their insured, that they must provide a written warranty directly accepting liability for any failure or issue that may arise from the quality, safety, fit or performance of the part. SCRS believes this language should also be applicable to the use of reconditioned or used parts as well.

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

***SCRS Comment:** SCRS supports legislation that requires all labor and material necessary to affect the repair are paid for.*

- 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.

- 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 **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.**

***SCRS Comment:** In most states the penalties identified in the Unfair Trade Practices Law are designed for enforcement pending proof of the infraction being a common business occurrence identified through market conduct surveys. SCRS believes this model would be ineffective without these actions being measurable and penalized on individual occurrences, and not just after proof of habitual practice.*

Section 5. Identification of Crash Parts

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 Facility

- 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 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. 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. **An Insurers, and representative of that insurer, that fails to comply with the provisions of ~~who engage in a pattern of violations~~ Section 6(A) and (B) 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.**

SCRS Comment: believes that the pattern of practice outlined in most states' Unfair Trade Practices is not acceptable enforcement to promote carriers to abide by the law. If the law identifies the practice as illegal, it should be illegal on every account, not as an undefined "pattern of practice." SCRS believes there should be a penalty involved in each violation that increases if the violations continue.

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.

Additions indicated by **boldface underline**.

Deletions indicated by **~~boldface strikethrough~~**.

K:/NCOIL/Issue Items/Property-Casualty/Auto Insurance/Aftermarket Crash Parts