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July 1, 2009

The Honorable Charles Curtiss, Chair
NCOIL Property-Casualty Committee
34 Legislative Plaza
Nashville, TN 37243

Dear Chairman Curtiss:

RE: Model Act on Motor Vehicle Crash Parts: OPPOSE
Model Act on Airbag Fraud: OPPOSE

The Association of International Automobile Manufacturers, Inc. (AIAM)¹ welcomes the opportunity to comment on the proposed Model Act on Motor Vehicle Crash Parts and Repair and the Model Act on Airbag Fraud which the NCOIL Property-Casualty Committee will consider at their July 11 meeting.

MODEL ACT ON MOTOR VEHICLE CRASH PARTS AND REPAIR

The issue of aftermarket crash parts, including consumer disclosure of and consent for the use of non-original equipment manufacturer aftermarket crash parts is of great importance to AIAM and its member companies. Original equipment vehicle manufacturers (OEs) and suppliers invest substantial time and resources in designing parts and industry support programs for vehicle repair and parts replacement. Vehicle performance in a collision and restoration to pre-loss condition are of paramount importance. Building high quality new cars and replacement parts, with quality support, helps ensure that consumers have the opportunity to maintain the performance and safety characteristics of the vehicle throughout its useful life.

While this Model Act is significantly revised from the crash parts model laws considered and rejected by NCOIL in years past, AIAM respectfully opposes this model and offers the following comments and recommendations:

California legislation. The Model Act is based on two pending California bills, SB 350 (as amended on March 31, 2009) and SB 427 (as amended on April 2, 2009). These bills continue to be "works in progress" and have not been enacted into law. In fact, we

¹ AIAM is a trade association representing 13 international motor vehicle manufacturers who accounted for 42.7% of all passenger cars and light trucks sold in the United States in 2008. Our member companies' facilities produced 3.1 million vehicles in 2008 - more than 35% of total U.S. production - and purchased nearly \$53 billion in parts and materials from U.S. suppliers. More than half of all vehicles sold by AIAM members in the United States are made in the United States. AIAM companies have invested over \$40 billion in 103 U.S. vehicle plants, component manufacturing facilities and R&D centers which employ 90,000 Americans with a payroll of \$6.6 billion.

understand the author of SB 350 has indicated that substantive issues with this bill will not be resolved this year and that the bill will be carried over to 2010. As an example of significant unresolved issues, the chief proponents of SB 350 imply the bill will simply codify current California regulations. However, SB 350 as amended on March 31 is not consistent with the regulation as intended and substantially alters the impact of the regulation regarding identification marking of all aftermarket crash parts that is adverse to the OEs. Further, SB 427 has been amended twice since the proposed Model Act was made available, and discussions continue in the legislature about possible important amendments to both bills. AIAM respectfully suggests that the NCOIL Model Act should not be based on California SB 350 and SB 427 and that only enacted laws be used by NCOIL as guidelines for model laws.

Warranty/certification. Section 4.A.ii of the Model Act states that "replacement crash parts certified to meet the standards set by an ANSI-recognized entity may be deemed equivalent" to OE parts. This presumption that "certified" aftermarket crash parts are the *de facto* equivalent of OE parts was rejected by NCOIL in 2002 and 2005, and AIAM recommends that this provision be stricken from the current proposed Model Act. We also note that similar language was amended out of California SB 350 on March 31. Legislated equivalence for certified imitation parts will restrict the consumer's ability to choose OE parts and will in fact force some consumers to accept a quality and/or cost option that may not be in their best interest.

Additionally, while Section 4.A.ii provides that insurers will warrant aftermarket parts under certain conditions, the model should also include warranty coverage for ancillary parts that fail as a result of a defective certified part in Section 4.A.iv. This provision should also be included on the itemized written estimate (Section 3.B.ii).

Finally, Section 4 fails to exclude insurers from acting as a third party certifier and does not prohibit insurers from owning or controlling a third party certifier, creating a potential conflict of interest since insurers enjoy direct economic benefits from the use of aftermarket parts.

Identification of Crash Parts. The NCOIL Model Act as drafted includes a provision on the identification of crash parts (Section 5) similar to language in California SB 350 as amended on March 31. Although SB 350 purports to codify CCR Title 10, Section 2695.8(g) of the California Code of Regulations, as previously described it does not.

The California Code of Regulations provision specifies conditions which must be met for an insurer to require the use of non-OE replacement crash parts in a repair. Only if an insurer requires the use of any non-OE manufacturer aftermarket crash parts in a repair, are all parts used in the repair, including OE manufacturer parts, required to carry manufacturer identification. Conversely, if an insurer does not require aftermarket parts, OE parts used in the repair do not need to be marked CCR §2695.8(g)(4).

However, in SB 350 and in the NCOIL Model Act, the parts identification language is not the same as the insurer provisions and, thus requires repairers to use only crash parts that carry manufacturer permanent identification markings in any repair. This departure from the existing California Code of Regulations will require OE manufacturers to make changes in their current business processes so that their current crash parts, including all inventories, could continue to be used in certain repairs in California.

AIAM recommends that Section 5 of the Model Act be moved and renumbered as 4.A.v. This change would make the identification of crash parts language in the Model Act consistent with CCR Title 10, Section 2695.8(g) of the California Code of Regulations which is an effective parts marking regulation and requirement.



Definition. The definition of "crash part" in Section 2.B. includes a general description of specific vehicle parts identified in 49 CFR 541.5, the parts identification requirements for passenger vehicles under the Federal Motor Vehicle Theft Prevention Standard. AIAM recommends that "grilles," "exterior lighting" and "reflective devices" be deleted from the NCOIL Model Act.

Invoice for parts. Section 3.I. (Disclosure and Prior Consent) would require, upon customer request after completion of the work, that the repair shop *show* the customer a copy of each invoice for parts used. AIAM recommends that this provision be deleted from the model since it is burdensome to the repair shop and redundant with other requirements in the Model Act regarding estimates and final invoices.

Applicability. The Model Act is simply not necessary to protect consumers. At least 40 states already have laws providing for consumer disclosure and/or consent for the use of non-OE aftermarket crash parts. And approximately 40 states have laws governing the use of crash parts, including identification of parts on estimates, manufacturers' identification on parts, warranties by aftermarket suppliers and other related provisions. The states have dealt directly with the crash parts issue. AIAM believes that model legislation in this field is not warranted.

As previously mentioned, in 2002 and 2005, NCOIL rejected model acts which contained many similar provisions as in the current version. NCOIL instead adopted a resolution in 2005 endorsing competition in the collision repair industry, warranty of parts by insurers and consumer disclosure of reimbursable parts by insurers. This resolution stands on its merits and the guidance it provides to the states. A model law on aftermarket crash parts is simply not necessary.

MODEL ACT ON AUTO AIRBAG FRAUD

There is no higher priority for automobile OEs than the safety of its vehicle owners and passengers, particularly through the use of OE-installed air bags and other vehicle safety features. Because inflatable restraint system components have been especially designed for use in specific vehicles, AIAM and its members believe that salvaged or used airbags could compromise the performance – and safety protection – of the system, and result in vehicles which no longer meet or exceed applicable safety standards.

Additionally, there is insufficient information, history and testing available for salvaged and used airbags to determine whether the salvaged airbag is not damaged or defective and to ensure that it is appropriate for the vehicle on which it is to be installed. For example, there is a general lack of information regarding any environmental or other degradation incurred prior to salvage, or whether a salvaged airbag would deploy properly in an accident. Testing or "certification" will not provide information on whether a salvaged airbag or any of its component parts will work correctly and as designed.

Further, since OE vehicle factory warranties on airbags and other parts only transfer when repairs are made with OE parts, AIAM strongly opposes the use of salvage airbags as there can be no compromise in this vehicle safety system.

We also note that at least 36 states currently have enacted laws dealing with airbag fraud and suggest that a model act on this issue is not necessary.

For these reasons, AIAM respectfully opposes the NCOIL Model Act on Auto Airbag Fraud.



Thank you for considering AIAM's views and recommendations on the proposed Model Acts on Motor Vehicle Crash Parts and Repair and Airbag Fraud. If you have any questions or need additional information, please contact Michael Cammisa, AIAM's Director of Safety, at (703) 247-2105.

Sincerely,



Michael J. Stanton
President & CEO

cc: Members of NCOIL Property-Casualty Committee
Members of NCOIL Executive Committee

Candace Thorson, NCOIL Deputy Executive Director

