



VEHICLE INFORMATION
SERVICES, INC.

June 14, 2005

The Honorable George Keiser
Chair, Property-Casualty Committee
National Conference of Insurance Legislators
385 Jordan Road
Troy, NY 12180

Re: NCOIL Certified Aftermarket Crash Parts Model Act

Dear Chairman Keiser and Members of the Property-Casualty Committee:

Thank you for the opportunity to comment on the Certified Aftermarket Crash Parts Model Act. As Chief Counsel of Vehicle Information Services, Inc., an organization that serves many aspects of the automotive and insurance industries and addresses consumer issues on a daily basis, I feel compelled to voice my concerns and opposition to any endorsement of this Certified Aftermarket Crash Parts Model Act ("Act").

Detrimental to Consumers

Despite the stated purpose of this Act, "to protect consumers from inferior aftermarket parts", the Act as drafted will not protect consumers from inferior aftermarket parts. It will actually remove some of the current protections that exist under state law and may expose consumers to greater risks.

Nothing in this Act prohibits the on-going use of non-certified aftermarket crash parts in vehicle repair. Nothing in this Act prevents passenger cars and trucks from being repaired with poor quality parts. Nothing in this Act reserves the use of the term "certified" for only those aftermarket crash parts which are given that designation in compliance with the terms of this Act. A careful review of this



proposed legislation demonstrates that the benefits flow solely to insurers and aftermarket crash part manufacturers, their importers, and distributors. As written, this Act accomplishes only two things: It presumes a certain level of quality for the parts used in a repair which may not actually exist; and it prohibits owners and financing entities from imposing penalties for the use of these parts in repairs. Consumers are not the beneficiaries of these results.

1.) Legislating Quality and Lack of Consumer Faith

This Act artificially creates a presumption of quality for certain aftermarket crash parts. In a free market economy, however, products of all types, including OEM products and parts, must earn their quality ratings in the marketplace. In a free market economy, consumers vote with their dollars about their faith in the quality and value of a product, which must be earned, not legislated.

Consumers have not requested this Act and they are not advocating for this organization to endorse it. The opposite is true. I have daily contact with consumers and know that they do not desire to have non-car company aftermarket crash parts used in the repair of their vehicles. Consumers do not believe that aftermarket parts are of the same quality as OEM parts and view the use of aftermarket parts in collision repairs as an attempt by insurers to avoid paying for a quality repair. This attempt to legislate an artificial level of quality for aftermarket products only confirms what consumers fear: That these parts are not truly equivalent to OEM parts and that they will now be forced to accept repairs using products of dubious quality and safety. The mere fact this Act has been proposed plainly shows that aftermarket parts, whether they are certified or not, are incapable of competing in an open and unregulated marketplace.

From the consumer perspective, they feel their vehicles are only properly repaired when OEM parts are used, and repairs made with aftermarket parts - even those which have been certified by some outside entity - are substandard. Consumers believe that their insurance policies or insurer promises to return customers' vehicles to "pre-loss condition" can only be fulfilled by repairing vehicles with OEM parts.



2.) “Independent” Third Party Certifiers

The only entities prohibited from becoming independent third party certifiers under the provision of this Act are manufacturers of vehicle parts, which includes both OEM and non-car company manufacturers. Distributors of aftermarket crash parts, importers of those parts, and insurers – all of whom may have a financial interest in the certification and use of aftermarket crash parts – are permitted to become certifiers. Additionally, nothing prohibits distributors, importers, or insurers from funding, operating, maintaining, overseeing, or owning an interest in a third party certifier. This raises the issue of how truly independent certifiers are likely to be when the prize is the ability to mandate the use of aftermarket crash parts for repairs without the imposition of penalties by the owner or finance company.

3.) Improper Certification and Non-Compliance

This Act offers consumers no protections against mistakes or irresponsible certification of parts by third party certifiers. The Act fails to impose any liability or accountability on certifiers to ensure that only top-quality parts pass certification. Likewise, the Act is completely devoid of any penalty provision for certifiers failing to comply with the definitional requirements of an “Independent Third Party Certifier” and fails to provide a mechanism for excluding non-complying certifiers from the process, or provide consumers with a mechanism for obtaining part certification information for a third party entity which has ceased to function.

4.) Certification Adds No Value to Consumers

In July of 2003, the California Bureau of Automotive Repair (BAR), a sub-agency of the Department of Consumer Affairs, published the results of its Crash Parts Certification Study. In the results of that study, BAR plainly stated that because certifiers would not stand behind the quality of the products they approved, their certification provided absolutely no benefit to consumers. “With regard to product warranty, certification has no value to the customer; if there are problems with the certified product the certifying entity does not stand behind their own certification process. If the certifying entity warranted their certified parts it would provide ‘added value’ to the certified part, and protect consumers against poor

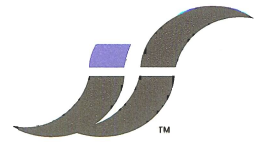


quality parts.” Despite this recommendation made two years ago by the BAR that certifiers provide consumers with real value by warranting the products they approve, the certifiers still choose not to do so. The fact that certifiers will not accept responsibility for the parts they claim are “equal to or better than” OEM parts, demonstrates the very real problem created for consumers if this Committee endorses an artificial presumption of quality for such parts.

5.) Decertification and Consumer Protection

While this Act proposes to give “crash part users” notice of decertification of previously certified parts, it neglects to provide consumers with a remedy for that decertification. If a part that has been installed on a consumer’s vehicle is subsequently decertified, nothing in this Act mandates that the part be immediately replaced with an OEM or other certified part at no expense to the consumer. Aftermarket parts are decertified by the currently existing “certifying” entities on a frequent basis. However, those parts are not recalled and removed from consumers’ vehicles, despite their decertification. This Act does nothing to improve that situation and continues to expose consumers to the dire consequences of improper certification or decertification. Consumers have absolutely no recourse under this Act against the certifying entity or any insurer which mandated the use of the part. The consumer is left with the unhappy situation of risking continued use of the part on the vehicle or paying out-of-pocket for replacement.

The same situation does not occur if a problem arises with an OEM part. Car makers have well established recall and replacement programs to ensure the ongoing performance and safety of their products. There is also no question as to the party bearing responsibility for correcting the problem when the part is OEM. When it is an aftermarket part, the consumer will be bounced from the overseas manufacturer, to the insurer paying for the repair, to the certifying entity, and back again with none accepting responsibility for correcting the issue. As the BAR study pointed out, at least one of the certifying entities interviewed, the Certified Aftermarket Parts Association (CAPA), claimed that the insurer had the responsibility to provide the consumer with a remedy for decertification - not CAPA. Accordingly, consumers, bear the lost time, inconvenience, and economic



brunt of attempting to remedy a problem aftermarket part, which they likely never wanted to be used in their vehicles' repair in the first place.

6.) Warranty Issue

One of the significant values a consumer obtains when purchasing a new motor vehicle is the manufacturer's overall warranty. When a vehicle is damaged, the manufacturer may restrict the bumper-to-bumper warranty for those portions of the vehicle which have been damaged, modified, or altered from the condition in which it entered the stream of commerce. This is may happen irrespective of whether the vehicle is later repaired with OEM or non-OEM parts.

For consumers, however, a repair using OEM parts, which carry the OEM parts warranty, is significantly preferable than a repair with any aftermarket parts. The reason is that the OEM parts can be warranted at the franchise dealership if a problem arises. Therefore, if a problem with the part arises, the consumer need not waste valuable time determining if the issue is covered by the vehicle warranty or the part warranty before initiating a remedy. Because the part is an OEM part, if it is the cause of the problem, it can be immediately addressed at the dealership after that determination.

Conversely, if a consumer's vehicle is repaired with an aftermarket part, the manufacturer or its direct representative is not located at the dealership to immediately address the problem. The consumer typically wastes valuable time and is inconvenienced by first taking the vehicle to the dealership only to be told that the problem is with the aftermarket part and cannot be repaired, as the dealership is not responsible for warranting aftermarket parts. The consumer must then go through the process of contacting the aftermarket part manufacturer to attempt to have the part repaired or replaced under warranty. As the majority of aftermarket parts manufacturers are located outside of the United States - most often they are located in Asia - it can be very difficult for a consumer to obtain a warranty repair on an aftermarket part.

This Act does not protect consumers by requiring insurers who mandate the use of aftermarket parts to create their own convenient, effective, national warranty programs and to ensure a true remedy for problem parts is available to consumers.



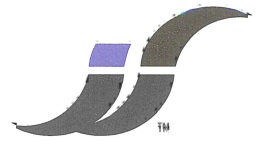
This Act does little to resolve the "illusory" nature of a guarantee or warranty that caused the appellate court in *Avery v. State Farm* to uphold a punitive damage award. The court's specific language to that effect bears repeating:

There was also evidence that State Farm's guarantee that it would replace non-OEM parts at no cost to the unsatisfied policyholders upon demand was bogus. If the aftermarket part was warranted by the part manufacturer, the policyholder was required to contact the manufacturer for relief. In most cases, these part manufacturers were located outside the United States in Taiwan or another country. If the policyholder demanded replacement of the non-OEM part, a State Farm adjustor was required to investigate the claim, and if it was approved, an OEM replacement part was installed but the cost was charged to the policyholder as an indemnity payment.

Avery v. State Farm Mut. Auto. Ins. Co., 321 Ill. App. 3d 269, 275, 746 N.E.2d 1242, 1249 (Ill. App. Ct., 2001), *appeal allowed*, 201 Ill. 2d 560, 786 N.E.2d 180 (2002).

Nothing in this Act relieves consumers of the tiresome obligation to chase down a remedy from a foreign country for problems associated with the aftermarket parts; and nothing in this Act obligates an insurer to provide consumers a remedy at no cost. This Act simply justifies those actions and virtually ensures that consumers will find they have the same problems with the parts manufacturer and with the insurer that were illustrated in *Avery*.

Forcing the use of aftermarket parts also hurts consumers by diminishing the value of their vehicles. The value of a one-stop warranty contributes to the fair market sales value of a vehicle. We have only to look at the success of manufacturer certified pre-owned vehicle sales programs to appreciate the significance consumers place on having the actual maker of the vehicle and its dealerships responsible for the overall safety and continuity of the vehicle.



7) **Misleading Information**

While this Act mandates consumers be informed that their vehicles are being repaired with certified aftermarket crash parts, the notice proffered is inadequate to prevent consumers from being misled as to the parts used in their vehicles' repairs.

First, this notice states, in pertinent part, that the estimate "has been prepared based on the use of crash parts supplied by the manufacturer of your vehicle or certified aftermarket crash parts supplied by an independent manufacturer." The implication in this notice is that only OEM and certified aftermarket crash parts have been used in the repair. It harms consumers by eliminating the notice state laws currently require that consumers be told of the use of anything other than a new OEM part, whether those are certified aftermarket or non-certified aftermarket, "like kind and quality", salvage, rebuilt, or remanufactured.

Second, because this notice will appear on every estimate prepared, rather than only those which utilize the aftermarket parts, consumers will become accustomed to seeing this notice and will not truly know nor understand if aftermarket parts have been used in the repair of their vehicles. The proposed notice is written disjunctively, i.e. a repair may contain all, some, or no certified aftermarket parts.

Lastly, repair estimates are written in a coded fashion. Some provide a partial legend explaining portions of the coding, but they are not completely explanatory and all are confusing to some degree. Understanding an estimate requires a level of familiarity and training that few consumers ever possess, irrespective of their education or sophistication. It is far-fetched to believe that consumers will have the ability to read these estimates and understand how and with what parts their vehicles will be repaired.

8.) **Use of the Term "Certified"**

This Act does not limit the use of the term "certified" only to those aftermarket parts which have passed the form of quality control attempted to be created here. Accordingly, nothing prohibits parts manufacturers, importers, or



distributors from placing a “certified” label on their products, without meeting any of the expected control mechanisms proposed by Act.

9.) Leasing and Finance Penalties

This Act seeks to interfere with existing contracts between leasing companies, finance companies, and consumers by voiding penalty provisions designed to ensure vehicles are repaired with OEM parts. Again, consumers will bear the economic brunt of such a policy. Because of on-going warranty issues, manufacturer pre-owned certification programs, decrease in value caused by use of aftermarket parts, and a legitimate desire to have leased and financed vehicles repaired with OEM products, leasing and finance companies will pass on any associated costs for this provision to consumers.

10.) Anticompetitive and Un-American

This model Act is contrary to many of the ideas we hold dear as Americans. It is certainly anticompetitive. This Act attempts to legislate quality for products which clearly have been unable to compete in an open marketplace. If these aftermarket parts were truly equivalent in quality to OEM parts, they would have little trouble competing in our free market. This legislation attempts to create an artificial marketplace for products which have been unable to succeed on their own due to historically poor quality and performance. Endorsing this legislation only serves to protect a portion of the market for products which cannot compete on their own.

This attempt to market protect products is also blatantly un-American. We have not moved to market protect American companies and their products that struggle to compete in the marketplace. We have allowed General Motors and Ford, for example, to suffer the consequences of falling market share, reduction in bond status, and lower share prices. These are American companies that employ many American consumers. If we are unwilling to market protect products made by American companies and American consumers, we should never consider passing legislation that serves to protect a portion of the market for foreign companies.

Chairman Keiser
June 14, 2005
Page 9 of 9



On behalf of the consumers who rely on you to protect their interests, I respectfully urge this Committee to refuse to endorse this Certified Aftermarket Crash Parts Model Act.

Sincerely,

A handwritten signature in purple ink, appearing to read 'Erica L. Eversman'. The signature is fluid and cursive, with a large loop at the end.

Erica L. Eversman, J.D.

Chief Counsel

cc: Candace Thorson
Members of the Property-Casualty Committee