

STORAGE NAME: h1663.in

DATE: March 23, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 1663

RELATING TO: Aftermarket crash parts

SPONSOR(S): Representative Bitner

COMPANION BILL(S): SB 2106 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE
 - (2) BUSINESS REGULATION & CONSUMER AFFAIRS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Currently, the use of aftermarket crash parts is regulated under ss. 501.30 - 501.34, F.S., the Aftermarket Crash Parts Act. Aftermarket crash parts are defined in s. 501.32, F.S., as the "replacement for any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle." An insurer or repair shop that uses non-original aftermarket crash parts must disclose that fact to the consumer when preparing an estimate for car repairs.

HB 1663 would prohibit insurers from requiring the use of a replacement part that is not new and original manufacturer equipment for a 3-year period equivalent to the initial 3-year manufacturer's warranty for the motor vehicle. At the conclusion of the 3-year period, the claimant would have the option to choose between a replacement part that is new and original manufacturer equipment or a replacement part that is not new and original manufacturer equipment.

The disclosure provision would be revised. This disclosure would contain a definition of the term "replacement crash parts," a list of the types of crash parts listed on the customer's estimate, and warranty information for the listed parts. Any non-OEM aftermarket crash parts used in this state would have to be inscribed with the manufacturer's name or logo.

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II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, the use of aftermarket crash parts is regulated under ss. 501.30 - 501.34, F.S., the Aftermarket Crash Parts Act. Aftermarket crash parts are defined in s. 501.32, F.S., as the "replacement for any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle."

Original equipment manufacturer (OEM) aftermarket crash parts are those made by the original manufacturer of the motor vehicle. Non-original equipment manufacturer (non-OEM) aftermarket crash parts are those made by a manufacturer other than the original manufacturer.

If non-OEM aftermarket crash parts are proposed to be used in a repair, the insurer or the repair shop performing the work is required to disclose that fact to the vehicle owner in a written estimate under s. 501.33, F.S. Any violation of this requirement is punishable under the Unfair Trade Practices Act (part X, chapter 626) or the Florida Deceptive and Unfair Trade Practices Act (part II, chapter 501).

The use of non-OEM parts generally does not violate or invalidate the original manufacturer's warranty. According to the 15 U.S.C. 2302:

No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the [Federal Trade] Commission if --

(1) the warrantor satisfies the [Federal Trade] Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) the Commission finds that such a waiver is in the public interest. The [Federal Trade] Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefor.

Warranties for aftermarket crash parts vary among insurers. For example, one insurer in the state will warrant the part for the remainder of the vehicle warranty or for one year from the date of the repair, whichever is greater. Another insurance company will guarantee a part for fit and finish for as long as the vehicle is owned by the policyholder. A third insurance company will also warrant a part for as long the vehicle is owned by the policyholder.

The Certified Automotive Parts Association (CAPA) was established in 1987 by the insurance industry in an effort to assure the quality of non-OEM aftermarket crash parts. The primary goal of this organization, according to the CAPA, is to test and inspect the quality of non-OEM parts used. As of 1998, the CAPA had certified 2,378 aftermarket crash parts. Parts that are certified by the organization bear the CAPA seal. Parts are not manufactured, marketed or sold by the CAPA.

In order for a part to be certified by the CAPA, the manufacturer must first allow for a detailed review and inspection of its factory and manufacturing process. An independent testing laboratory evaluates the manufacturer's purchasing, painting, inspection, tooling, quality control and operating process to ensure the manufacturer is capable of producing parts that meet the CAPA's standards. If the factory is approved, the manufacturer will submit parts for individual testing. According to the CAPA, if the part is found to be functionally equivalent to the OEM parts and complies with the CAPA's quality standards, the part is certified by the CAPA.

Because they are not name-brand parts, non-OEM parts can cost anywhere from 20 to 65 percent less than OEM parts. According to *Consumer Reports*, in the crash parts market, OEM parts account for 72 percent of parts sold, salvage parts are 10 percent, and 15 percent are non-certified non-OEM parts. CAPA-certified aftermarket crash parts account for 3.2 percent of parts used.

According to the Alliance of American Insurers, a national association of property and casualty insurers, thirty states require a written estimate identifying the non-OEM parts that are being used. Maryland and Texas do not require this disclosure, and Ohio requires that the use of non-OEM parts be disclosed only when a written estimate is requested.

B. EFFECT OF PROPOSED CHANGES:

Insurers would be prohibited from requiring the use of a replacement part that is not new and original manufacturer equipment for a 3-year period equivalent to the initial 3-year manufacturer's warranty for the motor vehicle. During this time, an insurer would be prohibited from requiring any additional payment, such as a surcharge, for the use of new and original manufacturer equipment. At the conclusion of the 3-year period, the claimant would have the option to choose between a replacement part that is new and original manufacturer equipment or a replacement part that is not new and original manufacturer equipment.

Insurers would be prohibited from requiring the use of any repair shop as a condition of payment of any claim.

The disclosure provision would be revised. This disclosure would contain a definition of the term "replacement crash parts," a list of the types of crash parts listed on the customer's estimate, and warranty information for the listed parts. There would be four types of replacement crash parts, which include:

- ◆ New original equipment manufacturer: parts made by the vehicle manufacturer, which are warranted by the original motor vehicle warranty;
- ◆ New aftermarket: parts made by companies other than the vehicle manufacturer, which are warranted by the distributor or the manufacturer;
- ◆ Recycled / Recyclable: parts that have been removed from another vehicle, which are warranted by the salvage vendor; and
- ◆ Remanufactured: parts that have been returned to a "like-new condition" by repairing or rebuilding, which are warranted by the remanufacturer of the part.

Any non-OEM aftermarket crash parts used in this state would have to be inscribed with the manufacturer's name or logo.

After the initial 3-year period, if an insurer uses aftermarket crash parts, the repair estimate would be required to include the costs of any modifications necessary to obtain satisfactory fit, finish and corrosion protection.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Insurers would be required to supply only OEM aftermarket crash parts.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Insurers would be required to offer replacement parts that are new and original manufacturer equipment.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 501.325, F.S., and amends s. 501.33, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 501.325, F.S., prohibiting insurers from requiring policyholders to use non-OEM aftermarket crash parts during the 3-year period equivalent to the initial 3-year warranty. Insurers would also be prohibited from requiring additional payment when OEM aftermarket parts are used during the initial 3-year period. After the 3-year period, any choice between using non-OEM aftermarket crash parts would be made by the claimant. An insurer would be prohibited from requiring the use of any repair shop as the condition of payment of a motor vehicle insurance claim.

Section 2. Amends s. 501.33, F.S., revising the disclosure requirement. An estimate for repairs supplied by the insurer or the repair shop would have to reveal whether the parts to be used for repair

are new original manufacturer parts; parts not made by the original manufacturer of the vehicle; recycled parts; or remanufactured parts. Any non-OEM aftermarket crash parts used would have to be inscribed with the manufacturing company's name or logo.

Section 3. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Some insurers may have to raise rates in order to cover the added costs of using OEM aftermarket crash parts.

2. Direct Private Sector Benefits:

Consumers would have car parts replaced with replacement parts that are new and original manufacturer equipment for the initial three years of ownership. At the conclusion of the 3-year period, the consumer would have the option to choose between a replacement part that is new and original manufacturer equipment or a replacement part that is not new and original manufacturer equipment.

3. Effects on Competition, Private Enterprise and Employment Markets:

Manufacturers that produce non-OEM aftermarket crash parts could experience a decrease in the demand for their products.

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D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

While the term "replacement part" is used throughout the bill, it is the intent of the sponsor that this legislation apply to "aftermarket crash parts" as defined in s. 501.32, F.S.

This legislation requires the use of new an original manufacturer equipment during the "3-year period equivalent to the initial 3-year warranty period for the vehicle." This presumes that all vehicles have an initial 3-year warranty.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Meredith Woodrum Snowden

Stephen Hogge