

HB

62

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## A BILL FOR AN ACT

RELATING TO MOTOR VEHICLE REPAIRS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that motor vehicle owners  
2 have the right to expect that their vehicles are repaired  
3 properly following a collision. Proper repairs include the  
4 installation of original equipment manufacturer parts, that is,  
5 the parts that vehicle manufacturers have tested and engineered  
6 to ensure proper fit, function, and most importantly, safety.  
7 Repairing vehicles with original equipment manufacturer parts  
8 helps to ensure the safety and proper performance of repaired  
9 motor vehicles.

10           The legislature further finds that to reduce costs, some  
11 insurance companies only pay for vehicle repairs made with  
12 aftermarket parts, despite vehicle manufacturer recommendations  
13 to the contrary. These aftermarket parts, also called non-  
14 original equipment manufacturer parts or generic parts, are not  
15 made by the original manufacturer and can be unsafe because they  
16 are not crash-tested and are inferior to original equipment  
17 manufacturer parts in fit and finish.



1           Furthermore, many motor vehicle insurers do not allow  
2 insureds to decide whether repairs are made with aftermarket  
3 parts or original equipment manufacturer parts, and they may in  
4 fact refuse to reimburse insureds for the additional costs of  
5 installing original equipment manufacturer parts, even when  
6 necessary to restore a vehicle to its pre-collision condition.  
7 This practice of the insurance industry has resulted in lawsuits  
8 across the nation when aftermarket parts installed in repaired  
9 vehicles have failed in subsequent collisions.

10           The purpose of this Act is to prohibit insurers from  
11 charging insureds an additional fee for repairs that use  
12 original equipment manufacturer parts if the vehicle  
13 manufacturer has recommended that original equipment  
14 manufacturer parts be used in the repair.

15           SECTION 2. Section 431:10C-313.6, Hawaii Revised Statutes,  
16 is amended by amending subsection (a) to read as follows:

17           "(a) An insurer shall make available a choice to the  
18 insured of authorizing a repair provider to utilize a like kind  
19 and quality part of an equal or better quality than the original  
20 equipment manufacturer part if ~~such~~ the part is available or  
21 an original equipment manufacturer part for motor vehicle body



1 repair work. If the insured or claimant chooses the use of an  
 2 original equipment manufacturer part, the insured or claimant  
 3 shall pay the additional cost of the original equipment  
 4 manufacturer part that is in excess of the equivalent like kind  
 5 and quality part, unless original equipment parts are required  
 6 or recommended by the vehicle [~~manufacturer's warranty.~~]  
 7 manufacturer."

8 SECTION 3. Statutory material to be repealed is bracketed  
 9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect upon its approval.

11

INTRODUCED BY:

*Bealer*

*Dirde Schingane*

JAN 17 2019



# H.B. NO. 62

**Report Title:**

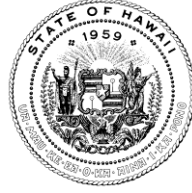
Motor Vehicle Insurance; Repair; Original Equipment Manufacturer Parts; Aftermarket Parts

**Description:**

Prohibits vehicle insurers from charging insureds an additional fee for repairs made with original equipment manufacturer parts if the vehicle manufacturer recommends original equipment manufacturer parts.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*





DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Consumer Protection and Commerce  
Wednesday, February 6, 2019  
2:00 p.m.  
State Capitol, Conference Room 329**

**On the following measure:  
H.B. 62, RELATING TO MOTOR VEHICLE REPAIRS**

Chair Takumi and Members of the Committee:

My name is Colin Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department opposes this bill.

This bill would require insurers to pay additional costs associated with the use of original equipment manufacturer (OEM) parts for motor vehicle body repair work if the insured chooses an original equipment part, the original part is available, and the vehicle manufacturer has recommended the use of original parts in the repair.

Under Hawaii Revised Statutes (HRS) section 431:10C-313.6, an insured may authorize a repair provider to use "a like kind and quality part of an equal or better quality" than the original, if available, or an original part for body repair work. The insurer guarantees a "like kind and quality part" for at least 90 days "or for the same guarantee period as the original equipment manufacturer part, whichever is longer."

If an after-market body part is available, an insured who chooses installation of an OEM part must pay the difference in cost between the after-market and OEM part “unless original equipment parts are required by the vehicle manufacturer’s warranty” under HRS section 431:10C-313.6(a). The difference in price between OEM and after-market parts is considerable.

Given the specific safeguards codified in HRS section 431:10C-313.6, the proposed change lacks an obvious benefit to the consumer. Insureds would pay higher insurance premiums, since accidents routinely involve damage to motor vehicle body parts, and OEM parts cost significantly more than after-market parts.

Further, changing the statutory requirement from manufacturer “required” parts to manufacturer “recommended” parts would mean the insurer would cover the cost of all OEM parts, since it is likely all manufacturers would “recommend” the use of higher-priced OEM parts as replacements. This insurer mandate to cover the costs of all OEM parts, which are significantly more expensive than after-market parts, will put upward pressure on consumer premium rates.

Finally, these higher costs will likely result in higher numbers of vehicles deemed total losses simply because insurers will conclude it is cheaper to “total” a vehicle than repair it.

Thank you for the opportunity to testify on this bill.

Hawaii State Legislature  
House Committee on Consumer Protection and Commerce  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

February 3, 2019

*Filed via electronic testimony submission system*

**RE: HB 62, Motor Vehicle Repairs – NAMIC’s written testimony**

Dear Representative Takumi, Chair; Representative Ichiyama, Vice-Chair; and honorable committee members:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 6, 2019, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation. NAMIC’s written comments need not be read into the record, so long as they are referenced as a formal submission and are provided to the committee for consideration.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country’s largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 84 members who write property/casualty/workers’ compensation in the State of Hawaii, which represents 28% of the insurance marketplace.

HB 62 states:

*If the insured or claimant chooses the use of an original equipment manufacturer part, the insured or claimant shall pay the additional cost of the original equipment manufacturer part that is in excess of the equivalent like kind and quality part, unless original equipment parts are required or recommended by the vehicle manufacturer."*

NAMIC and its member companies appreciate the importance of providing auto insurance consumers with the option of have Original Equipment Manufacturer (OEM) parts installed on their vehicle, if such a consideration is of *personal* importance to the policyholder. However, NAMIC is concerned about the proposed legislation, because HB 62 is likely to: a) Lead to needless consumer confusion; b) Effectuate a “de-facto” ban on the use of aftermarket parts in Hawaii; c) Hinder insurers in their ability to provide consumers with timely and cost-effective quality auto repairs; d) Create an unfair and inappropriate competitive advantage for OEM parts manufacturers to the detriment of all auto repair consumers; and e) Adversely impact the affordability of insurance for auto insurance consumers.

We are also concerned that the proposed legislation is inconsistent with the stated purpose and legislative intent of the pending federal legislation on point, “Promoting Automotive Repair, Trade, and Sales Act” (The PARTS Act)<sup>1</sup>, and the

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<sup>1</sup> As considered by Congress, the Promoting Automotive Repair, Trade, and Sales (PARTS) Act of 2015 (H.R. 1057 and S. 560) is designed to ensure open competition for one of the most expensive aspects of crash repair, the parts consumers need to get their cars fixed. Without robust competition, consumers are saddled with only one source for the parts they need (the car companies) and there will be no incentive to fairly price those parts. Competition is the most fundamental component of the America’s free market. It ensures fair prices and quality products for the American consumer. The PARTS Act will protect the competitive marketplace.





national trend toward increasing market competition in the creation and use of affordable, reliable, and safe automobile replacement parts. Additionally, interstate and international aftermarket parts and Non-OEM parts manufacturing and commerce involves matters subject to the regulatory authority of the federal government pursuant to the Dormant Commerce Clause of the U.S. Constitution. Consequently, NAMIC believes that the Hawaii State Legislature should avoid interfering with federal regulation of this interstate commerce activity, especially when the proposed legislation has possible federal anti-trust law implications and promotes monopolistic practices in favor of OEM parts manufacturers to the detriment of citizens of the state of Hawaii.

NAMIC respectfully submits the following concerns with the proposed legislation:

**a) HB 62 is likely to lead to needless consumer confusion -**

NAMIC is concerned that HB 62 states in its legislative declarations that aftermarket parts “*can be unsafe because they are not crash-tested and are inferior to original equipment manufacturer parts in fit and finish*”. First of all, the national data on point clearly does not support this contention. Further, since there is no evidence to support the belief that aftermarket parts are inferior in *any way* to OEM parts, this statement is likely to lead to consumer confusion over the safety of aftermarket parts.<sup>2</sup> Second, the legislative declaration in HB 62 creates an improper statutory preference for the use of OEM parts that could lead consumers to believe that they are being disadvantaged by having their vehicle repaired with aftermarket parts.

**b) The proposed legislation could effectuate a “de-facto” ban on the use of aftermarket parts in Hawaii -**

The proposed legislation would amend current state law to require insurers to pay for OEM parts if the manufacturer either requires or *recommends* use of OEM parts. Manufacturer created motor vehicle user manuals and service guides almost always, if not always, *recommend* use of parts manufactured by them. This is a classic example of one promoting their own economic self-interest, i.e. don’t shop around for more affordable auto parts, buy the manufacturer’s expensive auto parts.

Additionally, the proposed “recommendation” standard is somewhat ambiguous. What is meant by a “recommendation”? Is a slight recommendation the same as a strong recommendation? Is a recommendation supported with a rational explanation as to the tangible benefit to the consumer the same as a mere casual recommendation? Is an oral recommendation the same as a recommendation stated in a formal repair estimate? The current “required” standard is clear and unequivocal, because it is tied to a specific contractual requirement (typically associated with a contractual warranty provision that requires use of an OEM part).

**c) The proposed legislation will hinder auto insurers in their ability to provide consumers with timely and cost-effective quality auto repairs -**

NAMIC is concerned that HB 62 will force insurers and auto repair shops to only use OEM parts, which could cause serious delays in repairing automobiles because use of OEM parts will ultimately become the “only game in town”. Further, once Non-OEM and aftermarket parts become scarce due to limited use in the state marketplace, OEM parts will be subject to “demand-surge” pricing, which will lead to more expensive auto repairs for *all* consumers (insurance related repairs and non-insurance related auto repairs).

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<sup>2</sup> According to [Edmunds](#), today's aftermarket parts can be as good, or even better, than their OEM counterparts. Because aftermarket companies are trying to compete with one another and don't need to devote their time to creating a new design, they can re-engineer the OEM part to eliminate weaknesses or flaws.



The insurance implications of the proposed legislation are that insurers will be required to pay the difference between the cost of OEM parts and aftermarket parts, regardless of what the parties agreed to in the insuring agreement as to the use of aftermarket parts in auto repairs. Initially, this will provide some consumers with insurance benefits the policyholder did not purchase or pay for in his/her premium. Consumers currently have the option to purchase auto insurance policies or endorsements that specifically pay for OEM parts. Naturally, insurance consumers pay a higher rate for this more expensive, specialized auto parts insurance coverage. However, many consumers don't want or need OEM parts and would prefer to save money in their annual premium by agreeing to have their motor vehicle repaired with quality aftermarket parts as opposed to more expensive OEM parts. The proposed legislation will punish these cost-conscious and/or limited-income auto insurance consumers. The likely practical implications of this proposed legislation is that *all insurance consumers* will end up being forced to subsidize the cost of a mere auto repair preference of a *small number of consumers*, who already possess the option of paying the increased cost of OEM parts.

**d) HB 62 will create an unfair and inappropriate competitive advantage for OEM parts manufacturers to the detriment of all auto repair consumers -**

A significant number of auto repairs are negotiated and paid for outside of the insurance transaction by consumers that may not have procured first-party collision insurance coverage or for auto repairs unrelated to an insurance claim, so if HB 62 becomes law all auto repair consumers will be adversely impacted by higher auto repair costs. According to the Quality Parts Coalition, "the use of aftermarket parts saves consumer \$1.5 billion a year". Additionally, national studies have repeatedly determined that the average price of an OEM part costs about 60 percent more than the average price of an aftermarket part.<sup>3</sup>

**e) The proposed legislation could adversely impact the affordability of insurance for consumers -**

If insurers are required by state law to pay the difference between aftermarket parts and OEM parts, insurers will just factor this increased cost into the future price of their standard automobile insurance policy to cover the cost of OEM parts and then they will likely just stop using aftermarket parts altogether. Consequently, the proposed legislation will limit consumer choice and the policyholder's opportunity to purchase a less expensive auto insurance policy. In effect, HB 62 will become a significant auto-insurance rate cost-driver.

For the aforementioned reasons, NAMIC respectfully requests a **NO VOTE on HB 62, because it is special interest legislation that would benefit auto manufacturers to the detriment of auto repair consumers and auto insurance policyholders.**

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you would like to discuss NAMIC's written testimony.

Respectfully,

A handwritten signature in black ink that reads "Christian John Rataj".

Christian John Rataj, Esq.  
NAMIC Senior Regional Vice President  
State Government Affairs, Western Region

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<sup>3</sup> *Insurance Journal*, "Alliance Hails DC Reg. Promoting Aftermarket Parts," [www.insurancejournal.com/news/east/2003/06/04/29512.htm](http://www.insurancejournal.com/news/east/2003/06/04/29512.htm).

## TESTIMONY OF MICHAEL TANOUE

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COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair

Wednesday, February 6, 2019  
2:00 p.m.

### **HB 62**

Chair Takumi, Vice Chair Ichiyama, and members of the Committee on Consumer Protection & Commerce, my name is Michael Tanoue, counsel for Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

HIC **opposes** this bill. This bill mandates the use of OEM parts for all repairs if the manufacturer recommends it, not requires it, as the law reads today. This would create a monopolistic marketplace and would not be good for the consumer as it will increase costs and take away choices.

If it is virtually impossible to use anything but OEM parts, the cost of repairs will inevitably increase. Moreover, there will be more vehicles totaled if the cost of repair is too high compared to its value. Older vehicles will not be repaired at all as OEM parts will not be available. We believe that creating a monopolistic market for motor vehicle repair parts will increase costs of motor vehicle insurance for everyone, even those who are never involved in a crash. This is regressive and would likely increase the number of uninsured drivers in Hawaii.

The cost difference in using OEM parts vs after-market parts is significant. For instance, for a 2016 Toyota Tacoma SR 4-D Pickup Crew replacement of a front bumper cover, right front combo lamp assembly, left front combo lamp assembly, and hood panel, the OEM costs \$1,050 more or 54% more. Another carrier priced the replacement of a front bumper, hood, fender, and headlight on a 2008 Toyota Highlander. OEM would cost \$1,687 more, or 109% more.

Today, the Hawaii market is dynamic in the way different insurers handle repairs of motor vehicles. This is good for the consumer because they are able to purchase the type of insurance that fits their personal situation. Hawaii's insurers sometimes use after-market parts in repairs because they cost less. It is not true that some insurers use only after-market parts as there are some parts, such as air bags, for which OEM is the only available market. Furthermore, the law already requires that the insurer guaranty the part if it is not OEM. For the reasons stated above, we ask that this bill be held.

Thank you for the opportunity to testify.

February 4, 2019

The Honorable Roy M. Takumi Chair  
Committee on Consumer Protection & Commerce  
415 South Beretania Street  
Honolulu, HI. 96813

RE: HB 62

Dear Chairman Takumi,

Prism Group LLC opposes House Bill 62.

Section 1 states "These aftermarket parts, also called non-original equipment parts or generic parts, are not made by the original manufacturer and can be unsafe because they are not crash tested and are inferior to original equipment manufacturer parts in fit and finish." Regarding crash test the IIHS (Insurance Institute for Highway Safety), regards most aftermarket parts as cosmetic and does not need to be crash tested. These parts include bumpers, grilles, fenders, door skins and trim. The IIHS crash tested a 1997 Camry with these parts removed and concluded that the damage or potential injury was the same as a 1997 Camry with these parts attached. Yes, the IIHS does crash test, and because they do crash test, their data and opinions are very important. To make it clear, these parts do not need to be crash tested.

As for fit and finish, there are two independent organizations that certify aftermarket parts for proper fit and finish. CAPA Certified Auto Parts (CAPACertified.org) and NSF (NSF.org). Parts certified by these organizations are equal or better than the OEM parts in both form and fit.

In the above statement, the only thing that is relevant is that the parts are not made by the original manufacturer. So that statement should read "These aftermarket parts, also called non-original equipment parts or generic parts are not made by the original manufacturer." The rest of the original statement is someone's opinion and should not be a part of any legislation.

The second statement of concern and needs to be eliminated is as follows. "This practice of the insurance industry has resulted in lawsuits across the nation when aftermarket parts installed in repaired vehicles have failed in subsequent collisions." This statement is false. I could not find a lawsuit involving a certified bumper, grille, fender, or hood that failed in a collision. Most lawsuits involving collision repair dealt with poor workmanship. Also, if this statement had any truth to it, the insurance industry would be the first ones to feel the impact and discontinue using aftermarket parts.

The use of aftermarket parts in a collision repair saves the insurance company and ultimately the consumer a lot of money. A study done in 1999 by the Alliance of Automotive Insurers organization found that a \$25,000.00 vehicle would cost \$100,000.00 to rebuild using OEM parts. I could only wonder what the cost would be today, 20 years later. Insurance premiums are currently based on the use of aftermarket parts where applicable. "Cosmetic parts" hence bumper covers, fenders, grille, lamps, etc. All items relating to safety are purchased from the OEM supplier. Insurance companies make their money managing risk so they will not purchase safety related items from the aftermarket and risk a potential lawsuit. If all the "cosmetic parts" were purchased from an OEM supplier, the cost

to repair a vehicle would be substantially higher. As the cost of a repairs increase, more cars will be deemed "Total Loss" and may cause financial hardships for those involved.

Section 2 should not be changed to "or recommended by the vehicle manufacturer". All vehicle manufacturers will recommend their parts over an aftermarket part. The proposed word change will effectively remove aftermarket parts from a repair. Removing aftermarket parts as an alternative will not only raise insurance premiums but will create and protect OEM parts monopolies. The OEM suppliers should have competition when it comes to the "cosmetic parts", they already have a monopoly on the proprietary parts particular to their brand. If premiums increase so will the number of un-insured drivers which will then increase the premiums even more.

There is no need to change the wording in the law. Safety is not an issue, the insurance companies are not putting the consumer in any danger. Insurance companies use aftermarket parts for "cosmetic parts" and use OEM parts for safety related parts. If a consumer wants to use an OEM in lieu of an aftermarket he should pay the difference since that is the type of policy he paid for.

Last year, when this bill came up (HB1620) a few consumers testified. They had a few things in common. First, they all said that when they first got their policy they did not know that aftermarket parts were going to be used for repairs. Second, they said that had they known at the time they got their policies they would have gotten a policy that used only OEM parts. Maybe insurance companies should more fully disclose what is covered and offer more coverage options.

Thank you

Michael Yang  
Prism Group LLC

**HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE**

February 6, 2019

House Bill 62 Relating to Motor Vehicle Repairs

Chair Takumi, Vice-Chair Ichiyama, members of the House Committee on Consumer Protection and Commerce, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm offers these comments about HB 62 Relating to Motor Vehicle Repairs, and more specifically, Original Equipment Manufacturer (OEM) and Aftermarket Parts.

Current law, which is based on a National Association of Insurance Commissioners (NAIC) Model Act, allows insureds the choice of either an OEM or a “like kind and quality” aftermarket part in covered motor vehicle body repair work. If the vehicle manufacturer’s warranty requires the OEM part, the insurer may not charge the insured the cost difference between the parts.<sup>1</sup> In addition, the insurer may specify only non-OEM parts of “**equal or better quality,**” and **MUST** warranty them “**for the same guarantee period as the [OEM] part.**”<sup>2</sup> HRS § 431:10C-313.6 recognizes that, although consumers retain the ultimate control over the repair process, including parts selection, the decision of some policyholders to select higher priced parts should not adversely impact the rest of the insuring public through higher prices. This promotes, rather than restricts, consumer choice. The bottom line: only if there is no aftermarket part of “equal or better quality,” can the insurer charge the difference.

HB 62 would change this to prohibit insurers from charging the insured the difference in cost if the manufacturer “recommends” that its own part be used. State Farm opposes this legislation because every manufacturer will always “recommend” its own part; this will eliminate competition, drive up the cost of auto repairs, and cause Hawaii consumers to pay more for insurance. Some history might be helpful.

At one time, the OEMs’ only competition for supplying sheet metal crash parts came from salvage yards marketing “recycled” or “reconditioned” parts. Beginning in the early 1980’s non-OEM sheet metal and other exterior appearance parts, such as grilles and lamp assemblies, became available. This development challenged what had been a virtual monopoly by OEMs in the sale and distribution of new crash parts.

Because of the growing use of non-OEM parts, insurers, non-OEM manufacturers, and repair facilities formed the Certified Automotive Parts Association (CAPA). CAPA provides independent and objective testing and quality certification for non-OEM crash parts. CAPA is modeled after the Underwriters Laboratories, Inc., the global not-for-profit testing and

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<sup>1</sup> HRS § 431:10C-313.6(a)

<sup>2</sup> HRS § 431:10C-313.6(b).

certification organization formed by the insurance industry in 1894, particularly recognized for certifying electrical products. Parts meeting CAPA standards are certified as functionally equivalent to OEM parts with respect to quality, fit, performance, and corrosion protection.

Certain aftermarket or non-OEM parts have long been available and widely accepted by vehicle owners and the repair industry. These include items such as tires, brakes, belts, filters, batteries, lamps, exhaust, electrical and cooling system components, and glass. This has created competition in parts pricing. Without question, OEM parts pricing is influenced by the availability of competitively priced aftermarket parts, and, **in some cases, the same manufacturer produces the same OEM and non-OEM part.**

In 1996, in response to OEM campaigns to ban aftermarket parts, the NAIC approved an amendment to its Unfair Claims Settlement Practices Model Regulation that requires specific notice to vehicle owners when aftermarket parts are included in repair estimates. Almost all states (including Hawaii, 1997<sup>3</sup>) subsequently adopted laws or regulations that address the use of aftermarket parts. Most of these laws are patterned after the NAIC model, which requires consumer notice and consumer choice of parts selection without requiring insurers to pay non-competitive parts prices. State Farm supports this NAIC model regulation.

State Farm supports competition in the vehicle repair industry and consumer choice, including the availability and use of quality, competitively priced aftermarket, recycled, and reconditioned parts. State Farm opposes efforts by OEMs and other interest groups to limit the parts mix through anti-competitive legislation and unnecessary regulatory restrictions. Consumers have the most to lose when competition is eliminated. **Higher repair costs mean higher insurance costs for consumers.**

The bill preamble makes statements that are just inaccurate:

- **Proper repairs require the installation of OEM parts.** Properly certified crash parts are tested for crashworthiness, fit, finish, corrosion resistance, and safety. Indeed, existing law requires that only parts that are so certified may be used.
- **To reduce costs, some insurance companies only pay for vehicle repairs made with aftermarket parts.** It is true that aftermarket parts can be less expensive than OEMs, otherwise, there would be no point in using them. What is not true is that they are inherently inferior. In fact, there are situations where the same parts maker produces both the OEM and non-OEM parts in the same factory.
- **Aftermarket parts are unsafe because they are not tested.** CAPA-certified aftermarket parts do undergo rigorous testing, using some of today's most advanced testing equipment and technologies: lasers, infrared spectrographic analysis, Differential Scanning Calorimetry Test for Plastic and Foam, and full

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<sup>3</sup> Hawaii enacted HRS § 431:10C-313.6 in 1997.



part stress testing (crash-testing).<sup>4</sup> Insurers do try to save their policyholders money by getting repairs done as economically as possible, but existing law already requires that the parts used must be “equal or better quality,” and MUST warranty them “for the same guarantee period as the [OEM] part.”<sup>5</sup> Ultimately, all repair costs are borne by consumers in the premiums they pay for insurance.

There is no doubt that the availability of competitively priced, non-OEM parts protects consumers from monopolistic parts pricing by OEMs. All vehicle manufacturers will “recommend” that only their parts be used in completing repairs. Current law already requires insurers to use the OEM and pay the full price if the part is “required” to maintain the warranty. This legislation will allow OEM manufacturers to charge whatever price they want, giving them a monopoly. This will effectively ban aftermarket parts, and means all consumers will pay more for insurance, especially those that can least afford it. This is bad for consumers.

Thank you for the opportunity to present this testimony.

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<sup>4</sup> Science of Testing, [www.capacertified.org](http://www.capacertified.org).

<sup>5</sup> HRS § 431:10C-313.6(b).

Testimony from Dale Matsumoto, President of Auto Body Hawaii, Kailua-Kona  
In support with comment of HB62; Relating to Motor Vehicle Repairs  
House Committee on Consumer Protection & Commerce  
Wednesday, February 5, 2019, 2:00 p.m. room 329

Aloha Chair Takumi, Vice Chair Ichiyama and Members of the Committee,

My name is Dale Matsumoto and I am a co-owner and the President of Auto Body Hawaii, located in Kailua-Kona on Big Island of Hawaii. Our company has been in business for over 43 years and I personally have been repairing vehicles for 40 years. We are well known for our high quality standards and highly technical automotive collision repairs. We are known throughout our industry, in this State, the Nation and in different parts of the world. Our technicians, including myself, are I-CAR trained, ASE certified and also have attained our Hawaii State mechanic's licenses.

We are thankful to see that HB62 acknowledges that the legislature finds that motor vehicle owners have the right to have their vehicles repaired properly, which also includes the installation of OEM parts, and that safety is emphasized, as does the vehicle manufacturers.

We are also pleased that the legislature finds that some insurance companies will only pay for non-OEM parts and that you have identified that these parts can be unsafe and inferior to OEM parts, and that some insurers may refuse to reimburse consumers for the difference between the cost of a non-OEM part and the cost of an OEM part in order to restore the vehicle to its pre-collision condition.

In regards to the current 431:10C-313.6, no legislature measure should have to regulate proper and safe repairs. Vehicle manufacturers have already researched and developed proper repair procedures that have been tested in order to assure that the vehicle will function in the manner that it was originally engineered to do so. With the technological advancements the only proper way to repair today's vehicles are to follow the vehicle manufacturer's recommended repair procedures, which also includes the use of their Original Equipment Manufacturer (OEM) parts. Vehicle manufacturer do not recommend the use of non-OEM parts. Advanced Driver Assistance System (ADAS) in vehicles are very complex and many of them are integrated within each other. Safety systems like Supplementary Restraint Systems( Air Bags), Adaptive Cruise Controls, Automatic Braking Systems, Predictive Collision Avoidance Systems, Blind Spot Detection Systems and many more utilizes electronic control modules, sensors, lasers and infra-red thermal cameras. These systems and components are integrated within each other and its proper operation can be compromised by the use of non-OEM parts. These systems and their components are very technical advanced to the point where the average repair facility (mechanical and collision), including dealerships, do not thoroughly understand them, and they will be more complex in the days to come. As mentioned previously, repairing vehicles requires following the vehicle manufacturer's repair procedures, which also includes the use of OEM parts, ensures that the vehicle and its safety systems operate in the exact manner that it was designed for.

The below link from Volkswagen shows results of a crash test, that when using non-OEM parts, the non-OEM bumper reinforcement sustained more damages and did not absorb the impact as originally engineered by the vehicle manufacturer with their OEM parts. The video also illustrates that the air bags prematurely deployed and the calculation to repair resulted in three times more in cost when utilizing non-OEM parts. Hence by the use of non-OEM parts, the vehicle's safety system(s) are compromised and will not protect the vehicle's occupants as it were originally designed to.

<https://www.youtube.com/watch?v=I5qBxfCyhT4>

In February of 2010, SB2022 Hawaii's Legislatures addressed the use of Salvaged (Used) Airbags which successfully and rightfully defeated, due to consumer safety reasons. The current HB62 is based on preventing additional cost to the consumer but it does not take into consideration the safety aspect for the consumer.

Though I am in support of HB62, I respectfully and sincerely encourage you to consider SB823 or at least verbiage from SB823, and amend HB62 for the safety and well being of Hawaii's people.

Mahalo,  
Dale Matsumoto, President  
Auto Body Hawaii  
73-5601 Maiau Street  
Kailua-Kona, Hawaii 96740  
[dale@autobodyhawaii.com](mailto:dale@autobodyhawaii.com)

**I-CAR**, the Inter-Industry Conference on Auto Collision Repair, is an international not-for-profit organization dedicated to providing the information, knowledge and skills required to perform complete, safe and quality repairs. Formed in 1979 out of a collaboration across the six segments of the collision repair Inter-Industry, I-CAR serves and is represented by all segments of the Inter-Industry: Collision repair, Insurance, Original equipment manufacturers (OEMs), Education, training and research, Tools, equipment and supply, and related industry services

**ASE**, the National Institute for Automotive Service Excellence, since 1972 is an independent non-profit organization that works to improve the quality of vehicle repair and service by testing and certifying automotive professionals. ASE test and certifies automotive professionals so that shop owners and service customers can better gauge a technicians level of expertise before contracting the technician's services and can offer tangible proof of their technical knowledge.

Testimony from Van Takemoto, President, Island Fender  
For the Automotive Body and Painting Association of Hawaii  
and vehicle occupants of Hawaii  
In strong support of HB62 – Relating to Motor Vehicle Repairs  
COMMITTEE ON CONSUMER PROTECTION AND COMMERCE,  
Wednesday, February 6, 2019

Chair Takumi, Vice-Chair Ichiyama and members of the Committee on Consumer Protection and Commerce, I am here to testify in strong support of HB62 and would like the committee to consider some of the wording in the companion SB823.

My name is Van Takemoto, I am the owner/president of Island Fender. I am a specialist in Collision Repair and have been involved in this industry since 1971 and I am also a licensed mechanic. We are a small family business that specializes in damage analysis, repair planning and the repair of collision damaged vehicles. We are dedicated to maintaining the safety system designed into today's vehicles.

We were the first collision repair business in Hawaii to earn the designation of Gold Status by I-CAR and have maintained that designation with technicians recognized as Platinum Trained Individuals who have obtained this highest level of collision training and continuing education, which is a requirement of that designation.

I-CAR, the Inter-Industry Conference on Auto Collision Repair, is an international not-for-profit organization dedicated to providing the information, knowledge and skills required to perform complete, safe and quality repairs.

Formed in 1979 out of a collaboration across the six segments of the collision repair Inter-Industry, I-CAR serves -- and is represented by -- all segments of the Inter-Industry:

- Collision repair
- Insurance
- Original equipment manufacturers (OEMs)
- Education, training and research
- Tools, equipment and supply
- Related industry services

I have also made a substantial investment in training and equipment to be one of a handful of facilities certified in collision repair by many vehicle manufacturers. We are one of two certified by Mercedes-Benz, and the only facility certified by Volkswagen. We are also certified by US and Asian Vehicle Manufacturers.

I am here to testify on behalf of the Automotive Body and Painting Association of Hawaii and the drivers and passengers of Hawaii, especially those that have had the misfortune of being involved in an auto accident.

Hawaii is the only state in the country that REQUIRES CLAIMANTS TO PAY THE INCREASED COST OF ORIGINAL EQUIPMENT MANUFACTURED" CRASH PARTS IN BODY REPAIR.

HRS § 431:10C-313.6 that SB2243 refers to, currently requires insureds and claimants to pay the difference between the cost of cheaper aftermarket crash parts and the original equipment manufacturer's crash parts.

We would like to suggest that the words "or claimant" be deleted from this section.

This section of the HRS applies only to CRASH PARTS and DOES NOT APPLY to aftermarket mechanical parts like radiators, air conditioning condensers, brakes or consumables like wiper blades, coolants, tires, wheels and fluids. IT ONLY APPLIES TO BODY REPAIR CRASH PARTS.

Crash parts are defined in HRS437B-1 Definitions. "Crash parts" means motor vehicle replacement parts, either sheet metal or plastic, which constitute the visible exterior of the vehicle, including inner and outer panels, and which are repaired or replaced as the result of a collision.

In 1997 when HRS § 431:10C-313.6 was passed into law, body repair crash parts were cosmetic in design, so it seemed reasonable to use cheaper aftermarket parts that fit and looked like the original equipment manufactured crash parts. Crash parts were merely cosmetic parts.

Fast forward twenty years and crash parts today are engineered and crash tested as a part of a complex safety system. The cars of today protect the occupants from injury by managing the collision forces to move over and under the passenger compartment. Occupant safety systems like seatbelts and airbags are engineered to respond to critical timing to hundredths of a second. Too fast or too slow and someone gets hurt or dies.

Special interest testimony has or will bring up several points to confuse the relative issues of HB62 and I would like to address them at this time.

Increase in premiums.

- Property Casualty Insurers Association of America reported if all AM parts (this includes radiators and condensers) were banned: consumers with liability and physical damage coverages may have paid an additional 2.6 percent (or \$24) more per insured car each year because non-OEM aftermarket parts were banned. That's \$2.00 per month per vehicle.
- Insurers Information Institute reported in Trends, Challenges and Opportunities in Personal Lines Insurance in 2016 & Beyond that Hawaii was the most profitable state in the country for Personal Auto at 18.7%, three times more profitable than the national average.
- Local insurance companies like First Insurance, Island Insurance, Dtric and some national insurers like Progressive and All State, do not make Hawaii insureds or claimants pay the difference and yet they compete against the few large national insurers and their associations who are here to testify against HB62.

Increase in total losses, therefore increasing premiums.

- Aftermarket Crash Parts makes up a small percentage of the overall cost to repair collision damaged vehicles.

- The Property and Casualty Insurers Association of America's, Special Report, Aftermarket Parts: A \$2.34 Billion Benefit for Consumers reported that excluding labor, total crash part costs are about \$42.25 billion (\$3.90 billion—non-OEM and \$38.35 billion—OEM). Aftermarket parts is therefore 9.23% of the total parts cost.
- Total Parts Costs are around 42.6% of the total repair cost, so aftermarket crash parts is only 3.93% of the total cost. This is a small number and plays a very small factor in declaring a car a total loss.
- Local insurers and many national insurance companies already pays for OEM Crash Parts and they continue to operate profitably.

Will lead to an OEM monopoly and increased OEM part prices.

- OEM part prices, MSRP, Manufacturer's Suggested Retail Price is national and international in scope, and not priced State to State.
- Hawaii is only one of 50 states and it is ludicrous to think that SB2243 will have any effect on the MSRP. We are a small part of the total market.

Anti-Aftermarket parts.

- Auto Body shops use and will continue to use and offer aftermarket mechanical and consumables that can be mechanically and scientifically proven to be of like kind and quality.

Aftermarket crash parts are of like kind and quality.

- Some may be of like kind and quality in fit and finish, or how it looks.
- In reality many CAPA Certified parts are not of like kind and quality in fit and finish. Even Geico appraisers have confirmed this after inspecting vehicles trial fitted with aftermarket CAPA Certified parts.
- Aftermarket crash parts have never been engineered or tested, by the aftermarket part manufacturers or CAPA, in the vehicle manufacturer's safety system.
- If some CAPA certified crash parts do not even qualify in fit and finish, how do you think they will perform in an actual crash. Hope you are lucky and get a good one? Live or die?
- Low speed crash tests of installed aftermarket crash parts by Volkswagen have proven that aftermarket parts installed in their safety system adversely affected the crash system. It caused the airbags to deploy when they weren't supposed to and greatly increased the damage to the vehicle and the costs to repair them.

Opposition to HB623 is about self-interest and greed.

Support for HB62 is about consumer protection, safety and looking after consumer's interests.

Thank you for allowing me to testify in support of HB62 a consumer protection bill.

Van Takemoto  
 President, Island Fender  
 807 Ilaniwai Street,  
 Honolulu, Hi 96813  
[van@islandfender.com](mailto:van@islandfender.com)

and on behalf of the:  
The Automotive Body and Painting Association of Hawaii.



February 5, 2019

The Honorable Roy Takumi  
House Committee on Consumer Protection and Commerce  
415 S Beretania Sreet  
Honolulu, HI 96813

## **LKQ Opposes House Bill 62**

Dear Committee Chair Takumi and Committee Members:

As a Government Affairs Representative for LKQ Corporation, I am greatly concerned with HB 62, governing the use of aftermarket parts in Hawaii. HB 62 is scheduled for consideration before your Committee on Wednesday, February 6<sup>th</sup> at 2:00 pm.

***The bill would mandate the use of only Original Equipment Manufacturer (OEM) parts whenever the motor vehicle manufacturer recommends them. There is not a comparable incentive which exists anywhere else in the country.*** When broadly interpreted, HB 62 seeks to eliminate the use of aftermarket and alternative parts by promoting the wrongful presumption that they are unsafe compared to OEM parts.

The bill's legislative digest provides false and inaccurate information, creating a bias against the use of aftermarket parts and calls into question the integrity of the alternative parts industry as a whole. Such statements are highly misleading and may persuade committee members and consumers alike to believe that aftermarket parts are inferior to their more expensive OEM counterparts, all in an effort to secure a monopoly.

A monopoly is formed when a business controls the trade of its products and "recommends" their exclusive use. Naturally, a business will always recommend the use of their own products and services to increase its market share. In any given industry, when a business sector is suppressed and competitive market forces are disrupted, a monopoly will undeniably result in higher prices and limited choices. HB 62 intentionally creates a monopoly for the auto parts industry in favor of vehicle manufacturers and OEM parts, while dismissing the many benefits that independent vendors and alternative parts provide to consumers.

Aftermarket parts benefit consumers by providing a more affordable alternative to OEM parts for vehicle repairs. Importantly, they create competition which, in turn, drives down the cost of OEM parts. In all respects, greater competition, lower costs, and lower insurance premiums are all direct benefits from the free use of like kind and quality aftermarket parts in automobile repairs.

Furthermore, LKQ firmly believes that consumers should have the right to know the type of parts that are being used to repair their vehicle. This information should be delivered to the consumers in a fair and balanced manner.



LKQ Corporation is a leading provider of alternative and specialty parts to repair and accessorize automobiles and other vehicles. LKQ offers its customers a broad range of replacement systems, components, equipment and parts for automobiles, trucks, and recreational and performance vehicles. Globally, LKQ has an industry leading team of over 43,000 employees operating in 25 countries at more than 1,500 facilities.

We appreciate the opportunity to submit our written comments and respectfully express our OPPOSITION to HB 62. **We urgently ask you to reconsider your bill and allow aftermarket and alternative auto parts to continue to service consumers in Hawaii while maintaining consumer choice and open competition in the automotive industry.**

Please do not hesitate to contact me if you have any questions, comments or input. I can be reached at ebenezersdg@outlook.com and 754-248-9796.

Respectfully,

Catalina Jelkh Pareja  
Government Affairs Representative  
LKQ Corporation

**HB-62**

Submitted on: 2/5/2019 11:35:47 AM

Testimony for CPC on 2/6/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mascot Auto Parts	Mascot Auto Parts	Oppose	No

Comments:

Your Honor,

Motor vehicle owners have the right to expect a proper repair that upholds a quality for fit, function, and safety following a collision. However, the bill is promoting a misleading view on aftermarket parts as “unsafe, because they are not crash-tested and are inferior to original equipment manufacturer parts in fit and finish”. Such statement may cause consumers to believe under a false pretense that only original equipment manufacturer (OEM) parts can restore their vehicle to pre-collision conditions.

Mascot Auto Parts is a local company who retail and wholesale aftermarket body crash parts to local residents and repair shops since 1999. We import quality and certified aftermarket auto parts from manufacturers that have been approved by the Certified Automotive Parts Association (CAPA), the nation’s only ANSI accredited standards developer for competitive crash repair parts. CAPA is a non-profit organization that was established in 1987 to assure the quality of aftermarket replacement parts by examining the manufacturer’s plant, equipment, process, and products. CAPA will only issue their seal on examined parts after they pass testing procedures used nationally such as American Society for Testing and Materials (ASTM) and Society of Automotive Engineers (SAE). Such test procedures ensure the aftermarket parts with a CAPA seal are equivalent in appearance, fit, material composition, and mechanical properties to new OEM parts. As a vendor for cosmetic collision parts, we are responsible for providing quality parts to our community. It also takes a skilled technician to properly fit our cosmetic parts on the vehicle and ensure the safety features are returned to pre-collision state.

In addition, several insurance companies already offer insurance policy that allow the insured or claimant to choose OEM parts for repair work in Hawaii. Consumers need to choose a policy that suits their needs. The purchase of a motor vehicle is a big investment that required consideration for personal finances and suitability of that vehicle to our personal lives. It is equally important to gain as much knowledge and choose an insurance policy that helps secure your personal investment into that vehicle. As a community we should also take note on those who were affected by misleading insurance company practices and educate the public on what to look out for prior to signing for an insurance policy.

Lastly, without a diverse market allowing the use of high quality certified aftermarket auto parts, auto makers would have a monopoly on the replacement part industry with no checks or balances on pricing. Lower repair cost results in lower premium for policy holders. If aftermarket parts were never used, the high cost of OEM parts would drastically increase insurance premiums.



February 6, 2019

Honorable Roy M. Takumi, Chair  
Committee on Consumer Protection and Commerce  
Hawaii State Capitol, Room 320  
415 South Beretania Street  
Honolulu, HI 96813

RE: **HB 62** – OEM (Original Equipment Manufactured) Parts for All –**Testimony In Opposition**

Dear Chair Takumi, Vice-Chair Ichiyama, and members of the House Committee on Consumer Protection & Commerce,

Liberty Mutual, the third largest property and casualty insurer in the United States, supports consumer choice and reasonably priced product offerings for all policyholders. An efficient and cost-effective auto body repair shop experience facilitates Liberty's ability to offer a broad suite of product offerings at different price points that are commensurate with policyholders' needs and budgets. Insurers' ability to adjust claims in a timely manner by having access to suitable and safe alternatives to OEM parts enhances customer satisfaction while maintaining the safety standards of more expensive "original" parts. Limiting insurers' options for repairing automobiles to OEM parts only would jeopardize consumer choice, efficient claims handling, and affordability of insurance.

All policyholders, when given a choice, do not prefer OEM parts for vehicle repairs. Owners of older vehicles, for example, are generally indifferent to parts types in the repair of their vehicles, particularly if repairing with OEM alternatives means returning to the road more quickly. Liberty Mutual, like most insurers, offers OEM parts endorsements to policyholders who wish to pay more. But mandating OEM parts would eliminate customers' choice with no added benefit or value vis-à-vis less costly and equally effective alternative parts.

An efficient claim settlement process and returning policyholders to their properly and safely repaired vehicles is a top priority at Liberty Mutual. Efficient claims handling is enhanced with access to widely available quality repair parts, including non-OEM and aftermarket alternatives to original parts. Aftermarket parts are generally available from broader distribution outlets and retail markets that allow auto repair facilities to complete repairs more expediently and cost effectively. Policyholders spend less time waiting on repairs and loss of use (i.e. rental) expenses are reduced which benefits all policyholders.

Aftermarket alternatives to OEM parts have proven to be less costly for auto repairs and consumers. Injecting mandatory and unnecessary costs into the claims adjustment process by requiring OEM parts places upward pressure on insurance premiums for all policyholders. Consumers on the margin, at the minimum financial responsibility limit for example, may be forced to forego insurance when premiums increase.

A reputable auto insurance publication ranks Hawaii as #2 in the nation for keeping down auto costs in relation to disposable income (i.e. as measured by Auto Insurance Report's "pain index," that is, the percentage of income that auto policyholders in HI allocate to the costs of automobile insurance). Mandating OEM parts for all repairs would increase auto insurance costs and negatively impact Hawaii's exemplary efforts to keep auto insurance affordable.

Thank you for the opportunity to offer testimony on this matter.

I urge you to vote **NO** on HB 62.

Sincerely,

*Cecil J. Autry*

Cecil J. Autry  
Senior Public Affairs Officer and Counsel  
1201 K. Street, Suite 950  
Sacramento, CA 95814

Testimony from Sabrina Dela Rama, Manager, Tony Collision

In strong support of HB62 – Relating to Motor Vehicle Repairs

House Committee on Consumer Protection and Commerce

Wednesday, Feb. 6, conference room 329

Aloha Chair Takumi and Committee members,

My name is Sabrina Dela Rama and I am a manager of Tony Group Collision Center and a board member of The Automotive Body and Paint Association of Hawaii. I have worked in the Auto Collision Industry for 30 years. I am in strong support of House Bill HB62 with amendments of language from SB.823;

SECTION 2. Section 431:10C-313.6, Hawaii Revised Statutes, is amended to read as follows:

"~~[f]~~**§431:10C-313.6**~~[f]~~ **Original equipment manufacturer's and like kind and quality crash parts.** (a) An insurer shall make available a choice to the insured consumer of authorizing a repair provider to utilize a like kind and quality crash part of an equal or better quality than the original equipment manufacturer crash part if ~~[such]~~ the crash part is available or an original equipment manufacturer crash part for motor vehicle body repair work. If the consumer chooses the use of an original equipment manufacturer crash part that would affect the consumer's crash avoidance or safety systems, the insured consumer shall not pay the additional cost of the original equipment manufacturer crash part that is in excess of the equivalent like kind and quality crash part. If the ~~[e]~~ consumer chooses the use of an original equipment manufacturer crash part~~[r]~~ that would not affect the consumer's

crash avoidance or safety systems, the ~~or claimant~~ consumer shall pay the additional cost of the original equipment manufacturer crash part that is in excess of the equivalent like kind and quality crash part, unless original equipment manufacturer crash parts are required by the vehicle manufacturer's warranty[-] or the use of a like kind and quality crash part would void an existing manufacturer's warranty or the consumer's vehicle lease agreement.

(b) A like kind and quality crash part under subsection (a), of an equal or better quality than the original equipment manufacturer crash part, shall carry a guarantee in writing for the quality of the like kind and quality crash part and the equivalent performance in a vehicle's crash avoidance and safety systems for not less than ninety days or for the same guarantee period as the original equipment manufacturer crash part, whichever is longer. The guarantee shall be provided by the insurer.

(c) Like kind and quality crash parts, certified or approved by governmental or industry organizations, shall be utilized if available.

(d) For any crash part authorized under subsection (a), a repair provider shall:

(1) Provide an consumer with the cost of the original equipment manufacturer crash part and the like kind

and quality crash part, which shall detail the cost markup for each crash part; and

- (2) Disclose to an consumer any potential impact that use of a like kind and quality crash part may have on a vehicle manufacturer's warranty, or whether any crash part that meets the vehicle manufacturer's specifications is acceptable for purposes of maintaining or receiving benefits under the vehicle manufacturer's warranty.

(e) This section shall apply to crash parts for vehicles that are not more than five years old, as of the date of the collision.

(f) For the purposes of this section, "like kind and quality" means having a quality that is equal to or better than the original equipment manufacturer crash part and performing at least as well as the original equipment manufacturer crash part in a crash avoidance and safety system test."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2019, and shall be repealed on July 1, 2024; provided that section 431:10C-313.6, Hawaii Revised Statutes, as amended by section 2 of this Act, shall be reenacted in the form in which it read on the day before the effective date of this Act.



Today's vehicles are built to protect the occupants in crash safety, the vehicles are made to transfer energy protecting the occupants, deploying the airbags or 100% avoiding collision altogether. Changing a part can affect the way the vehicle reacts, from stopping the vehicle before it hits the car in front, to keeping you from changing lanes when a car is in your blind spot, from hitting a child riding a bike when you're reversing to the deployment & deflating of the airbags at the precise time. A/M parts are NOT tested in the same manner and preciseness of the Original parts.

Now, imagine after a collision and the repairs you get your car back, as a layperson (consumer), you would expect your car to perform as it was prior. So you ask the collision center;

Consumer; so these aftermarket parts you placed on my car, will they perform the same way as the OE parts?

collision center; "maybe"

Consumer; "what are you talking about maybe"?

Collision center; Well, we were told it's "like kind in quality" but we don't have any crash report showing this.

Consumer As a layperson; Wait, I bought this car for my family's safety but you're telling me these A/M parts have not been tested? Then how can you tell "it's like kind in quality"?

Collision center; I'm not the one who's saying that, the insurance company is making that statement.

The only ones who benefit from these A/M parts are the insurance companies and the A/M parts manufacturers and the last I checked, these companies were profiting billions in revenue a year.

As a licensed dealer repairer and a certified collision center, my experience in these A/M parts are NONE compatible to the OE parts. The A/M parts have never been crash tested, they don't fit 99.9% of the time and they are NOT of the same quality, therefore, NO one can 100% guarantee the crash worthiness of any A/M parts or the materials they're made with or the thickness of each one that's made.

We are unsure if it will allow the radars from today's vehicles to read through the plastic bumpers or not. Today's vehicle has evolved dramatically that these systems will brake for you, keep you in your driving lane, avoid you from changing lanes if a car is in your blindspot. Today's vehicle is made with parts made precisely for these safety features and tested to the exact spec's. Using untested parts or parts made from other than the original manufacture is taking a chance of the car's crash worthiness or safety features because no one really knows, in other words, "maybe or maybe not" ..

So I ask the Committee to please allow HB 62 to pass with amendments for the safety of our consumers and their or your family's lives.

You will hear testimonies in oppositions of this bill, however, these opposition is only from companies that care only about their profits and not the safety of our consumers. They are BILLION dollar

companies deceiving consumers in believing cheaper parts is the same as crash tested parts and, they are NOT.

We are the professionals, we see the crashes and the devastation of the damages these cars sustain, therefore, we know putting a part that's not tested can lead to sever injuries or even death and consumers trust we will do the right thing for them and their families. However, the law is soooooo old that it doesn't cover the safety aspect of today's vehicle with the vehicle being a "SAFETY SYSTEM" as one. That is why, we need to update the law to protect consumers safety. Its time we change with technology that means changes in the A/M parts law.

**Members of the House, I want to thank you very much for allowing me to testify in support of HB.62**

Sincerely,

Sabrina Dela Rama

Tony Group Collision Center

94-1133 KaUka Blvd.

Waipahu, Hi. 96797

And on behalf of;

Automotive Body and Paint Association of Hawaii



- Government Employees Insurance Company
- GEICO General Insurance Company
- GEICO Indemnity Company
- GEICO Casualty Company

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TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER ALASKA & HAWAII  
711 Kapiolani Blvd., Suite 300 ■ Honolulu, HI 96813-5238 ■ Email: [tdayton@geico.com](mailto:tdayton@geico.com)  
Direct: (808) 593-1875 ■ FAX (808) 593-1876 ■ Cell: (808) 341-9252

**House Committee on Consumer Protection & Commerce**  
Room 329 State Capitol  
Wednesday, February 6, 2019, 2:00 p.m.

**HB 62 - RELATING TO Motor Vehicle Repairs.**

Chair Takumi, Vice-Chair Ichiyama and Members of the CPC:

My name is Timothy M. Dayton, General Manager of GEICO, Hawaii's largest auto insurer. **GEICO opposes House Bill Number 62.** This proposal is similar to manufacturers of prescription drugs using scare tactics to eliminate competition from generic drugs, stifle competition and charge artificially high pricing. The key change to the current statutory wording is from *required to maintain the vehicle manufacturer's warranty to* instead read *recommended by the vehicle manufacture*; this change would eliminate all non OEM parts in Hawaii. Please consider:

1. All OEM parts carry a markup of 25% - 35% over MSRP due to an artificial and unique Hawaii mark up.
2. Almost no OEM parts are stocked in Hawaii. Tearing the vehicle down and then ordering parts causes major delays in repair time, increases costs and often extends beyond the customer's rental coverage (typically 30 days). We need more parts stocked in Hawaii rather than eliminating ones that are here.
3. In the event of a major natural disaster (such as Hurricane Lane) hitting Oahu, the very limited body shop physical capacity to stage and tear down coupled with ordering and waiting on parts will result in many repairable vehicles stacked in a

queue waiting months. That is best case assuming that Honolulu Harbor is operational.

GEICO also has **accuracy concerns with the Bill**; as currently drafted the Legislation contains numerous statements that are false and misleading. If this Bill is not held, GEICO respectfully requests that any revision corrects the misinformation that includes:

1. Proper repairs can be completed using after-market parts that have been tested and certified; proper repair is not limited to OEM parts.
2. Currently the HRS requires that insurance estimates call for after-market parts when available rather than insurers only pay for after-market parts to reduce costs.
3. After-market parts are unsafe because they are not crash tested is false.
4. Insurers not allowing consumers to choose between OEM and after-market would be a violation of the current HRS.

GEICO believes that this bill is anti-consumer and should be held but if it is passed, in addition to correcting the false statements noted above, the following should be considered:

- Address the lack of parts currently being stocked in Hawaii.
- Many parts are installed as original equipment but are not made by the manufacturer. The Bill as worded would create ambiguity.
- Address the parts price mark up over MSRP.
- All parts OEM and LKQ alike should be certified and approved. GEICO suggests that the last two words in [**§431:10C-313.6**] **Original equipment manufacturer's and like kind and quality parts.** be stricken to read as follows:

(c) Like kind and quality parts, certified or approved by governmental or industry organizations, shall be utilized ~~if available~~.

GEICO appreciates the ability to present our thoughts and your consideration of this testimony. Due to all of the misinformation in the Bill we **respectfully urge the Committee to hold House Bill 62 or else at least modify it to address the various shortcomings.**

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy M. Dayton", with a long horizontal flourish extending to the right.

Timothy M. Dayton, CPCU



February 5, 2019

The Honorable Roy M. Takumi  
Committee on Consumer Protection and Commerce  
Conference Room 329  
State Capitol  
415 Beretania Street  
Honolulu, HI 96813

Re: House Bill 62

Dear Chairman Takumi and Members of the Committee:

The Automotive Recyclers Association (ARA) represents the interests of over 4,500 professional automotive recyclers across the United States and in 17 countries internationally. ARA is dedicated to the efficient removal and reutilization of genuine original equipment manufacturer (OEM) automotive parts. ARA urges you to OPPOSE House Bill 62 and is concerned that recognizing the recommendations of an OEM as part of a statutory requirement would have serious negative anti-competitive consequences for consumers, professional automotive recyclers, and independent collision repair professionals.

Over the past ten years, automobile manufacturers have become more aggressive in their efforts to force recycled OEM parts out of the market, releasing position statements, repair specifications and procedures that are both biased and based on weak or no apparent scientific research claiming that recycled OEM parts are inferior to new OEM parts.

Last year the U.S. Federal Trade Commission (FTC) sent warning letters to at least one automotive manufacturer expressing concerns about the company's statements that consumers must use specified parts or service providers to keep their warranties intact. ARA believes that the OEM standards are being used to stifle competition in the auto parts and repair markets rather than an expression of the OEMs' concern for safety. ARA has met with the FTC to push for a review into this coordinated effort.

Adhering to narrowly-defined and mandated OEM standards will greatly increase costs to consumers because adherence often results in increased repair costs, which in turn causes more repairable vehicles to be declared "total loss" vehicles. The increase in total repair costs and the increase in declarations of "total loss" vehicles also increases insurance costs to consumers.

ARA is committed to promoting effective competition in the markets for replacement parts and equipment to ensure efficient repair and maintenance of motor vehicles around the globe. The Association vigorously supports the quality repair option that OEM recycled parts provide

consumers; parts that are manufactured by the OEMs and built to meet their requirements for fit, finish, durability, reliability and safety.

ARA asks members of the Committee to recognize the genuine value, safety and benefits that each repair part option (recycled, new, aftermarket, remanufactured) provide, even if auto manufacturers refuse to do so. Repair procedures and recommendations that advance only the highest priced parts option (new OEM) are a disservice to consumers, ignores the expertise and independence of collision repairers, and is a direct attack on the automotive recycling industry.

ARA believes that manufacturers are using the imposition of repair recommendations, procedures and standards to discourage the use of genuine OEM recycled parts and to secure a market that establishes manufacturers as the only source of parts and services for the repair of consumers' vehicles.

I urge you to OPPOSE House Bill 62 and hold auto manufacturers accountable for the true motivation behind attacks on alternative replacement part options and recycled OEM parts reutilization.

Sincerely,

A handwritten signature in cursive script that reads "Sandy Blalock". The signature is enclosed in a thin black rectangular border.

Sandy Blalock  
Executive Director

February 5, 2019

The Honorable Roy M. Takumi

Committee on Consumer Protection and Commerce

Conference Room 329

State Capitol

415 Beretania Street

Honolulu, HI 96813

Re: House Bill 62

Dear Chairman Takumi and Members of the Committee:

I am a small business owner. Pacific Salvage Company is located on the Big Island and we have been in the automotive recycling business since 1989.

I am writing to you today to express my opposition to legislation, House Bill 62, currently being considered by the Committee. This bill could have serious negative implications for my business and the entire replacement parts industry in Hawaii.

As you may know, over the years automobile manufacturers have released position statements, repair specifications and procedures that have misled consumers and called into question the integrity of the genuine recycled, OEM parts that my business sells to consumers every day. I am very concerned that if passed, House Bill 62 would create a strong bias against the utilization of recycled OEM parts.

By recognizing the mere recommendations of an OEM when it comes to vehicle repair, this legislation would be forcing repair professionals to rely on policies that are often biased and based on little or no scientific research. In my opinion, this is an attempt to monopolize the market in favor of new OEM parts.

I ask you to recognize the genuine value, safety and benefits that recycled OEM parts provide. Repair procedures and recommendations that promote only new OEM parts are a disservice to Hawaiians.

I urge you to OPPOSE House Bill 62.

Sincerely, Robert Conser





**HB-62**

Submitted on: 2/2/2019 11:19:02 AM

Testimony for CPC on 2/6/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jane Sugimura	Individual	Support	No

Comments:

I agree with the intent and purpose of this bill, which would allow a car owner to determine that repairs be made with factory warranted parts rather than untested aftermarket parts.

## Testimony Supporting HB62 - Relating to Motor Vehicle Repairs - Aftermarket Vs OEM Parts

House Committee on Consumer Protection and Commerce (CPC) Wednesday Feb 6, 2019 2 PM – Room 329

Submitted by former GEICO Policyholder for 55 years, Ed Wagner, Mililani, HI

Aloha Chair Takumi and members of the CPC Committee, HB62 was resurrected from 2018 HB1620 / SB2243 which was killed at the last minute by Senate President Ron Kouchi. He clearly serves and protects insurance industry profits instead of public safety so why is he still in that position?

**Note:** HB62 language should be modified to include the same language as Senator Baker's final version last year.

The testimony from HB1620 and SB2243 is still relevant and should be reviewed as part of the testimony for this year's version, and I incorporate that testimony, including my own, by reference.

Nothing has changed since last year except that we finally have a new Insurance Commissioner and AG who, hopefully, will serve, support, and protect the public instead of serving, supporting, and protecting insurance

company ill-gotten profits at the expense of auto safety and human life as the former AG Chin and Insurance Commissioner Ito did so.

**Gordon Ito told body shops in Nov, 2017 that for anything to change in Hawaii, someone has to die first!** Maybe that person who dies will be one of you in a car that was repaired with aftermarket crash parts, sloppily repaired, and unsafe to drive.

**Note:** Some of GEICO's DRP body shops on Oahu have done shoddy repairs that had to be redone by a manufacturer certified shop just to make the car safe to drive and retain its resale value.

No body shop should be allowed to repair a vehicle unless the shop has been certified by the vehicle manufacturer to do so. This will raise the standards for everyone to insure the safety of our residents, including all of you.

**Class-action lawsuit hits GEICO over unsafe repairs**

<https://globenewswire.com/news-release/2017/12/15/1262683/0/en/Class-action-lawsuit-hits-GEICO-over-unsafe-repairs.html>

Insurance companies and aftermarket ( AM ) parts manufacturers and distributors will again attempt to claim that their parts are of like kind and quality ( LKQ ) to OEM parts. That is a false statement when it comes to vehicle CRASH SAFETY SYSTEMS. However, it is a GENERALLY correct statement when referring ONLY to non-crash safety parts such as brake pads, radiators,

head lights, tail lights, plastic bumpers, and etc, but not for structural safety system parts like fenders, hoods, radiator supports, door shells, roof tops, and etc.

The companies will continue to claim that aftermarket parts are of “like kind and quality” as OEM parts because they are certified by the Certified Automotive Parts Association (CAPA), but CAPA still does not, to my knowledge, incur the extra expense that car manufacturers do to crash test such parts **on a vehicle** at sufficient speed to insure that they meet their specifications for crash safety systems. Doing so would only raise the cost of those aftermarket parts to OEM prices, and decrease profits of the insurance companies and AM parts manufacturers.

Texas attorney Todd Tracy, who won a \$42M lawsuit in 2017 against a body shop for failing to follow OEM procedures, has crash tested aftermarket so called crash safety parts **in vehicles** and found them to be inferior to OEM crash parts.

### **\$42 Million Verdict Warns Auto Insurance Carriers To Stop Bullying Body Shops Into Making Shoddy Repairs**

<https://www.vehiclesafetyfirm.com/blog/safety-defect/car-repair/42-million-verdict-warns-auto-insurance-carriers-to-stop-bullying-body-shops-into-making-shoddy-repairs/>

**Are auto insurers putting the bottom line ahead of safety? Nov 4 2015**

<https://www.wcvb.com/article/corners-cut-on-car-repairs-to-save-insurance-companies-money/8076058>

## **Attorney Todd Tracy Unveils Results of New Crash Test - Sep 19, 2018**

<https://www.fenderbender.com/articles/11531-attorney-todd-tracy-unveiled-results-of-new-crash-test>

“The crash test results revealed that the genuine parts performed exactly as intended to ensure passenger safety, while the previously crashed aftermarket parts-installed vehicle produced results that Tracy called **"total and massive destruction" in critical areas.**”

“For example, the driver left femur force on the aftermarket parts-repaired vehicle was 1700 N (newton) but only 397 N (newton) on the vehicle repaired with genuine Honda OEM parts - a "400 percent difference," Tracy said.”

"The biggest takeaway of this presentation is that we're beginning to define what 'like kind and quality' means," said Burl Richards, ABAT [ Auto Body Association of Texas ] president and Burl's Collision Center owner. "We now have scientific proof that shows vehicles are safer when they're repaired using OEM parts and OEM procedures. We made major frontal repairs to this vehicle, and its crashworthiness held up and was exactly the same as a new OEM car.”

## **How Todd Tracy Uses Crash Tests To Prove Cases - 4'33" youtube video**

<https://www.youtube.com/watch?v=Gm5oIV7vfc4>

**Todd Tracy moderate-overlap crash test of 2013  
Honda Fit with aftermarket parts at Karco**

<https://www.youtube.com/watch?v=hTF3iVJ6gIY&t=36s>

Mr. Tracy is speaking in the following video.

**Crash Tests Prove Aftermarket Auto Parts & Non OEM  
Repairs Cause Serious Injuries**

[https://www.youtube.com/watch?v=Z\\_WnVIWfqPc](https://www.youtube.com/watch?v=Z_WnVIWfqPc)

The CPC Committee might wish to contact the Todd Tracy Law firm at: 214-324-9000 for some expert advice that you won't get from an insurance company.

<https://www.vehiclesafetyfirm.com/>

Following is what happens when an airbag deploys a hundredth of a second late as a result of faulty vehicle repair and failure to perform pre and post electronic scans of safety systems like airbags.

<https://gizmodo.com/this-is-what-happens-when-an-airbag-deploys-a-hundredth-1690481385>

Louisiana AG and Mississippi AG have been fighting insurance company abuses across administrations for several years and Senator Blumenthal has been fighting the industry for many years since he was AG for Connecticut. He is a member of the Senate Subcommittee for Insurance & Consumer Protection. His staff and other

Committee member staff know what goes on here in Hawaii.

All 3 are discussing shoddy car repair in the following video. AG Connors should join them in fighting this epidemic scourge on society. The video is just one example of what a post repair inspection can find. See my proposal below for a state post repair inspection program.

### **Auto insurers accused of pushing cheap and sometimes dangerous repairs**

<https://www.cnn.com/2015/02/11/us/auto-repair-investigation/index.html>

Insurance and aftermarket parts company motives are solely based on profit, not on auto safety and the value of human life. The insurance companies will try to convince you that using OEM parts instead of aftermarket parts will raise insurance premiums too.

According to testimony submitted last year for SB2243, “Property Casualty Insurers Association of America reported if all AM parts (this includes radiators and condensers) were banned: consumers with liability and physical damage coverages may have paid an additional 2.6 percent (or \$24) more per insured car each year because non-OEM aftermarket parts were banned. That’s \$2.00 per month per vehicle.”

If the insurance companies raise rates more than 2.6%, it should be considered price gouging and insurance fraud.



Don't let any insurance company tell you that they guarantee or warranty repairs. They do not! If someone is in an accident caused by shoddy work, the body shop is liable, not the insurance company.

### ["Who Guarantees Repairs?" The Insurance Company or the Auto Body Shop?](#)

**Note:** The extra cost for parts, like everything else in Hawaii, is the result of the 20% to 30% increase in the cost of ALL goods shipped to Hawaii because of the Matson shipping monopoly which depends on the Jones Act of 1920 for its very survival.

### **Proposal for a state post vehicle accident repair inspection program**

The Insurance Commission Investigations Branch Chief, Sam Thomsen, and reputable body shops support my proposal for the state to establish a post vehicle accident repair inspection program to insure that body shops are repairing vehicles according to manufacturer required / recommended procedures and returning them to safe pre-accident condition. Such inspections would be performed by a state licensed inspector on a random basis without any prior notice being given to the body shop.

On the mainland, such post repair inspections are done at the request and expense of the vehicle owner. However, a state program could be funded in part by an annual fee levied against body shops. The above video with Senator Blumenthal, and Mississippi and Louisiana AGs shows

what a post vehicle repair inspection can find by using a borescope.

The entire insurance industry in the United States is composed of “Gangsters Evading Insurance Claims Often” brought about by the 1990’s McKinsey Report that taught insurance companies of all types how to stop being an honest, reputable service industry and become an insatiably greedy and crooked money grubbing machine, an organized crime syndicate of sorts, by using the infamous 3Ds of Delay, Deny, and Defend to steal money from policyholders after a claim is filed.

### **Insurance Claim Delays Deliver Massive Profits To Industry By Shorting Customers - 12/13/2011**

[https://www.huffingtonpost.com/2011/12/13/insurance-claim-delays-industry-profits-allstate-mckinsey-company\\_n\\_1139102.html](https://www.huffingtonpost.com/2011/12/13/insurance-claim-delays-industry-profits-allstate-mckinsey-company_n_1139102.html)

Insurance of all kinds is indeed a racket! There are thousands of lawsuits against insurance companies all over the country. When will the abuses stop? You can start right now by passing HB62 and getting it and the Senate companion bill signed into law this time.

The following animated videos show precisely how the insurance industry works throughout ALL 50 states.

**Do you really want to take your vehicle to a Direct Repair Shop(DRP)?**

<https://www.youtube.com/watch?v=7ZcjbuMEI84>

## **Who Can You Trust?**

<https://youtu.be/6Qa2VYE6E30>

## **Horton Insurance Heroes Protection Plan**

The TRUTH! IF insurance company ads were honest. The arrow must be clicked to begin the video.

<https://www.facebook.com/267836059978741/videos/871299129632428/>

Mahalo,

*Edward J. Wagner*

Ed Wagner

**HB-62**

Submitted on: 2/5/2019 3:37:45 PM

Testimony for CPC on 2/6/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Herbert Lee	Individual	Support	No

Comments:

Aloha, thank you for allowing me the opportunity to voice my support to prohibit insurance providers from charging additional fees to the insured for vehicle repairs recommend the use of original equipment parts for such repair. The car manufacturers and certified mechanics understand what is required to upkeep and maintain vehicles in optimal operational performance. Allowing companies to charge that additional fee for OEM parts will discourage the insured from following the recommendation to repair the vehicle properly and safely for the consumers. Thank you.

# American Property Casualty Insurance Association

To: The Honorable Roy M. Takumi, Chair  
The Honorable Linda Ichiyama, Vice Chair  
House Committee on Consumer Protection & Commerce

From: Mark Sektnan, Vice President

Re: **HB 62 – Relating to Motor Vehicle Repairs**  
**APCIA Position: OPPOSE**

Date: Wednesday, February 6, 2019  
2:00 p.m., Conference Room 329

Aloha Chair Takumi, Vice Chair Ichiyama and members of the committee:

The American Property Casualty Insurers Association of America (APCIA) is opposed to **HB 62** which prohibits vehicle insurers from charging insureds an additional fee for repairs made with original equipment manufacturer parts (OEM) if the vehicle manufacturer recommends original equipment manufacturer parts. Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

Not surprisingly, most if not all OEM's recommend exclusive use of their parts for the simple reason that that OEM parts can cost up to 60 percent more than equivalent like kind and quality parts. This bill effectively requires OEM parts to be used on every repair, which could significantly increase the repair costs that are ultimately reflected in what consumers pay for auto insurance. Current law strikes an appropriate balance, consumers who want to pay the additional cost of an OEM part can do so and the additional cost is not passed on to all the state's auto insurance policyholders who benefit from the cost saving generated using quality aftermarket parts.

## OEM Parts Cost More than Aftermarket Parts without added value

Non-OEM parts are quite common throughout the repair industry, are tested and verified to meet OEM standards and help keep repair costs down, which in-turn helps keep auto insurance more affordable. In fact, many non-OEM parts are often made by the same manufacturers that make OEM parts. Greater access to high quality generic replacement parts help consumers by increasing competition and lowering prices and usually provide

lifetime warranties, far more than the warranties of many original equipment manufacturers.

Consumer advocates support competition for repair parts. In support of federal legislation to protect the competitive marketplace for repair parts consumer had this to say:

[CFA: Consumer Federation of America](#)

“The lack of competition for repair parts will result in high repair costs and more vehicles being ‘totaled’ because the price of repairing the damage exceeds the value of the vehicle. High repair costs will lead to higher insurance premiums. Furthermore, when faced with expensive repairs and a limited budget, consumers may simply not be able to replace their head light or a broken side mirror, items essential for safe driving.”

[Advocates for Highway and Auto Safety](#)

“The bottom line: If automakers succeed in eliminating competition, the cost to the consumer would be profound.”

HB 62 could also limit access to parts for repair if a major catastrophe was to hit Hawaii such as Hurricane Lane. This would be especially true in Oahu. The capacity of body shops in Hawaii is very limited. If a body shop is required to order OEM parts which are not stored in Hawaii, vehicle repairs could dramatically slow down. Insurers and consumer should have access to the widest availability of appropriate parts including non-OEM parts.

Consumers should not be pressured into using higher cost OEM when parts of equal, and sometime better quality, are available at a fraction of the cost. This cost should not be borne by the consumers of Hawaii. If the legislature insists on requiring insurers to pay for the additional costs associated with OEM parts, insurers should be given time to adjust premiums to spread these unnecessary costs among all consumers in Hawaii.

APCIA asks the committee to **hold** the bill in committee.