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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Intrastate Commerce
Thursday, March 14, 2019
8:30 a.m.
State Capitol, Conference Room 430**

**On the following measure:
S.B. 823, S.D. 1, RELATING TO MOTOR VEHICLE REPAIRS**

Chair Ohno 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 offers comments on this bill.

The purpose of this bill is to address issues that arise during the repairs of newer motor vehicle models and the use of original equipment manufacturer parts and like kind and quality parts.

This bill mandates insurers to "clearly" make available to their policyholders, during initial applications or renewal of their policies, the option of authorizing the use of like kind and quality or original equipment manufacturer crash parts for motor vehicles' repair work. However, the word "clearly" might not be uniformly used or applied throughout the industry, as insurers may have different approaches in complying with this requirement.

This bill also replaces “claimant” with “insured consumer” in describing the process by which repairs are sought for damaged vehicles. This amendment may cause problems, as it is not obvious that “insured consumer” includes third-party claimants under policy coverages.

Additionally, this bill requires that like kind and quality parts be certified and approved by governmental or industry organizations. In contrast, current law requires only that these parts be certified or approved by governmental or industry organizations if available. The new stricter standard may ultimately impact the availability of like kind and quality parts for repairs of motor vehicles and may drive repair providers to use only original equipment manufacturer parts, even when these parts are not preferred.

This bill also mandates that repair providers disclose to insured consumers the potential impacts of using like kind and quality parts on vehicle warranties and whether the use of these parts is acceptable for maintaining and receiving benefits under existing vehicle warranties. The Department is unclear as to the training or certification process repair providers must undergo to be qualified to interpret and discuss warranty coverages as applied to different makes and models of vehicles. To be properly versed in this area, repair providers may need to be trained or certified by automakers and insurers before they are able to disseminate this important information to insured consumers. The Department is aware that repair providers may have liability concerns should insured consumers rely on repair providers’ explanations when making decisions affecting their safety.

As this bill introduces new requirements and terminology for this important issue, the Department respectfully suggests conducting a study to better understand the potential impact this bill will have on the motor vehicle manufacturers, motor vehicle repair industry, motor vehicle insurers, and motor vehicle parts industry.

Thank you for the opportunity to testify on this measure.

TESTIMONY OF MICHAEL ONOFRIETTI

COMMITTEE ON INTRASTATE COMMERCE
Representative Takashi Ohno, Chair
Representative Dale T. Kobayashi, Vice Chair

Thursday, March 14, 2019
8:30 a.m.

SB 823, SD1

Chair Ohno, Vice Chair Kobayashi, and members of the Committee on Intrastate Commerce, my name is Michael Onofrietti, ACAS, MAAA, CPCU, Senior Vice President, Actuarial Services, Product Development & Management for Island Insurance and Chairman of the Auto Policy Committee 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.

Hawaii Insurers Council **opposes** this bill.

We believe the purpose of this bill is to ensure that a motor vehicle crash repair is performed properly, and to disclose cost and other information about aftermarket crash parts to consumers. The insurer still needs to guaranty the crash part for the life of the motor vehicle as is required by current law. While we support the intent of the bill if it is to ensure proper motor vehicle body repairs, we believe there are serious flaws in the bill as drafted:

1. If safety of the consumer is the priority, regulation and manufacturer certification is required of motor vehicle body shops.

Today, mechanics need to be licensed and are regulated by the state. However, motor vehicle body shops are not licensed and are not regulated. The often-cited Texas case where a Honda Fit repair failed was not because of a failed crash part. It was an improper installation by a body shop. The roof of the vehicle was glued on in the repair instead of

welded. Therefore, proper installation is vital in any motor vehicle body repair. Since technology is changing so rapidly in this area, those who perform motor vehicle body repairs need continuing education and training in order to perform their work properly. We believe that requiring manufacturer certification for each vehicle make repaired by Hawaii body shops repair along with state licensing are the best and only ways to ensure safe, appropriate repairs.

2. The bill is regressive.

The bill requires the use of OEM parts if the vehicle is ten years old or less if it affects the consumer's Advanced Driver Assist Systems or safety systems. This means that every consumer who purchases motor vehicle insurance will pay for this benefit. Safety system is undefined, so it will be litigated at some future point. This provision means that the price of motor vehicle insurance will increase, making it more expensive for those who can least afford it. Even if you never get into a motor vehicle crash, you will pay for this. If your vehicle is eleven years old and you wish to have it repaired with less expensive cosmetic parts, you will pay for this. There is no evidence that the use of aftermarket crash parts is unsafe, so this is a cost increase with no benefit.

3. Disclosure.

The bill contains language that we believe will be confusing to the consumer at point of sale. Motor vehicle insurance is often purchased online or even on the phone to an insurance agent. Today, there is little face-to-face contact at point of sale or renewal. We recommend uniform disclosure by insurers at point of policy delivery, with language promulgated by the insurance commissioner.

4. Confusion for the consumer.

The bill requires the motor vehicle body shop to disclose their cost of the OEM part and crash part, but only requires the shop to disclose the mark-up on the crash part. The

body shop is also required to disclose any potential impact that use of a crash part may have on a vehicle's warranty. This is unnecessary as the Federal Magnuson-Moss Warranty Act (MMWA) passed in 1975 is a federal law that governs consumer product warranties. It prevents manufacturers from voiding or invalidating warranties based on the use of aftermarket or recycled genuine OEM parts during repairs.

Even if the body shop discloses all their OEM costs, crash part costs and crash part mark-ups, there is no way a consumer can know whether this information is accurate. Furthermore, we do not believe this is useful information to the consumer. Finally, without a licensing environment, we do not believe there is adequate enforcement if the body shop does not comply. This provision could leave the consumer confused and without remedy.

Hawaii Insurers Council believes this is an issue that is appropriate to study thoroughly. The motor vehicle repair laws have been on the books for a very long time and at one time, most shops did mechanical and body work. Today, most shops that do body work do only that and the same for mechanical work. Twenty-first century safety mechanisms incorporated in the body and other areas of vehicles can be affected by improper repairs and installation regardless of whether the part is an OEM or aftermarket part.

We ask that this bill be amended to study whether motor vehicle body repair shops should be licensed by the state, whether motor vehicle body repair persons should be certified by every motor vehicle manufacturer for those vehicles for which they repair, and whether the use of aftermarket parts pose any safety hazard to the consumer if they are installed properly.

Thank you for the opportunity to testify.



March 13, 2019

The Honorable Takashi Ohno
House Committee on Intrastate Commerce
415 S Beretania Sreet
Honolulu, HI 96813

LKQ Opposes Senate Bill 823

Dear Committee Chair Ohno and Committee Members:

As a Government Affairs Representative for LKQ Corporation, I am greatly concerned with SB 823, governing the use of automotive crash parts in Hawaii. SB 823 is scheduled for consideration before your Committee on Thursday, March 14th at 8:30 am.

The bill mandates the use of OEM parts if the part affects a vehicle's crash avoidance or safety systems, requires the use of OEM parts only if an alternative part would void the manufacturer's warranty or lease agreement, and restricts the use of non-OEM parts on vehicles that are ten (10) years or newer as of the date of the collision. When broadly interpreted, SB 823 seeks to eliminate the use of non-OEM alternative parts by promoting the wrongful presumption that they are unsafe and inferior compared to OEM parts.

The bill's legislative digest provides false and inaccurate information, creating a bias against the use of non-OEM 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 non-OEM parts are inferior to their more expensive OEM counterparts, all in an effort to secure a monopoly.

Non-OEM 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 alternative 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 SB 823. **We urgently ask you to vote NO on SB 823 and allow non-OEM 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

**HOUSE COMMITTEE ON
INTRASTATE COMMERCE**

March 14, 2019

Senate Bill 823, S.D. 1 Relating to Motor Vehicle Repairs

Chair Ohno, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm opposes S.B. 823, S.D.1 Relating to Motor Vehicle Repairs.

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.¹ 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.**”² 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,” that will perform the function** can the insurer charge the difference.

S.B. 823, S.D.1 adds additional language to the current statute, but in so doing creates more ambiguity and possibly more litigation. Proponents of the change have argued that the statute should refer to crash parts as defined in chapter 437B. Hence the insertion of this definition in the bill: ““Crash part” means an exterior sheet metal or plastic body part, such as a hood, door, fender, bumper component, grille, headlight, tail light or other lamp, or other cosmetic trim part most frequently damaged in a vehicle accident.” The proponents, however, have argued that crash parts are for safety systems, not “exterior sheet metal or plastic body part, such as a hood, door, fender, bumper component, grille, headlight, tail light or other lamp, or other cosmetic trim” as defined here. In fact they have orally agreed that these parts are not part of the safety system. Hence this inclusion obfuscates and confuses rather than clarifies the safety parts they have consistently referred to.

This change in the definition will increase costs. 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

¹ HRS § 431:10C-313.6(a)

² HRS § 431:10C-313.6(b).

challenged what had been a virtual monopoly by OEMs in the sale and distribution of new crash parts. Admittedly, early on, there were quality control issues.

Because of the growing use of non-OEM parts, insurers, non-OEM manufacturers, and repair facilities formed the Certified Automotive Parts Association (CAPA) as way to ensure quality. 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 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, 1997³) 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.

³ Hawaii enacted HRS § 431:10C-313.6 in 1997.

- **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 part stress testing (crash-testing).⁴ 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.”⁵ 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. Current law already requires insurers to use the OEM part if there is no comparable aftermarket part that performs as well as or better than the OEM. This bill does not change that. What it does do is require all consumers to pay higher insurance prices for those consumers who choose to have an OEM part when a comparable aftermarket part is available and will do the job. State Farm believes in consumer choice, but it also believes that other consumers should not pay for those choices. 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.

⁴ Science of Testing, www.capacertified.org.

⁵ HRS § 431:10C-313.6(b).

Hawaii State Legislature
House Committee on Interstate Commerce

March 13, 2019

Filed via electronic testimony submission system

RE: SB 823, SD1, Relating to Motor Vehicle Repairs – NAMIC’s written testimony in opposition

Dear Representative Ohno, Chair; Representative Kobayashi, 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 March 14, 2019, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

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 and workers’ compensation in the State of Hawaii, which represents 28% of the insurance marketplace.

NAMIC and its member companies appreciate the importance of providing auto insurance consumers with the option of having 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 SB 823, SD1 is likely to: a) Lead to needless consumer confusion and unjustified concern; b) Impose an impractical and costly administrative burden on insurers; c) Hinder insurers in their ability to provide consumers with timely and cost-effective quality auto repairs; and d) Adversely impact the affordability of insurance for insurance consumers.

Additionally, NAMIC respectfully submits the following questions and concerns with the proposed legislation:

A. The proposed legislation states:

An insurer shall clearly make available a choice to the insured consumer, at the time the insurer offers a new or renewal motor vehicle policy coverage, 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 the crash part is available or an original equipment manufacturer crash part for motor vehicle body repair work.

NAMIC has the following questions and concerns with this provision:

- 1) What is meant by “clearly make available a choice to the insured consumer”? This language is ambiguous and rife with potential for legal and regulatory disagreement.
- 2) This provision would impose an impractical and unworkable administrative requirement on insurers. Specifically, this provision would require *all* auto insurer to have to develop, rate, price, and market two different auto insurance property damage coverages: an OEM parts-based insurance coverage policy and an aftermarket parts-based insurance coverage policy. This requirement will create significant administrative and underwriting costs for auto insurers that could adversely impact affordability of auto insurance for consumers. The proponents of the bill have failed to demonstrate that this is even necessary in a competitive auto insurance marketplace where consumers may procure OEM parts-based insurance coverage if they so desire. Let the insurers who want to offer



this product compete for consumers interest in OEM part-based insurance coverage and let those insurers who do not believe that offering an OEM parts-based insurance coverage would be a reasonable use of their business resources or consistent with their consumer book of business limit their coverage to only more cost-effective aftermarket parts-based insurance coverage.

- 3) NAMIC is concerned that this provision will create legal and regulatory problems for insurers at policy inception and renewal time. Although the language states that a insurer need only “make available a choice”, the inclusion of the qualifying word “clearly” could be legally interpreted to create an administrative requirement that the insurer make an “informal offer” of the two different products. This nebulous compliance requirement will create legal and regulatory uncertainty and potential liability for insurers. The reality of the situation is that if a consumer has a personal preference for OEM parts, they can specifically shop for it and ask the insurance agent for an auto insurance policy that provides for OEM parts replacement. Moreover, there is no evidence to support the contention that the majority of insurance consumers, or even a significant population of consumers, care about whether their vehicle is repaired with OEM parts or aftermarket parts. There is also no evidence to support the belief that insurance consumers have any interest in paying additional insurance premium for auto insurance property damage coverage that will pay for OEM parts. This proposed requirement is a classic “solution in search of a problem”.
- 4) NAMIC is concerned that this provision is impractical and unworkable. This section of the bill requires an insurer to clearly make available an OEM parts-based auto insurance policy and an aftermarket parts-based insurance policy at policy inception and renewal time, but then the proposed statutory provision qualifies this with the following language, “... if the *crash part* is available or an original equipment manufacturer *crash part* for motor vehicle body repair work.” What does this mean? Does the insurer have to make a determination if the crash part or OEM part is available and works at policy inception time or at renewal time? The operative time for consideration is when the part is needed for the actual repair, which an insurer will not know at the time of the policy inception or renewal.

B. The proposed legislation states:

If the insured consumer chooses the use of an original equipment manufacturer crash part that would affect the insured consumer's Advanced Driver Assist Systems 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.

NAMIC is concerned that this provision is ambiguous and rife with potential for misunderstanding, disagreement, and legal strife. What is the specific definition of a “*safety systems*”? Moreover, what does it mean to “*affect the insured consumers Advanced Driver Assist Systems or safety systems*”? This language could be broadly interpreted to apply to almost every automobile part, because motor vehicles are integrated and interconnected mechanical systems.

NAMIC is also concerned with the requirement that the insurer must pay for OEM parts that do not affect the insured consumer's Advanced Driver Assist Systems or safety systems, if the use of an aftermarket part would void the vehicle warranty or lease agreement. In effect, this means that an insurer will be forced into paying for OEM parts whenever a lender, leasing agency, or vehicle manufacturer impose a contractual requirement for use of OEM parts in vehicle repairs on a consumer that is entirely unrelated to the consumer's auto insuring agreement contractual relationship with the insurer. In other words, the lender, lease agency and manufacturer will be legally empowered to control a major auto insurance pricing variable (cost difference between using OEM parts and aftermarket parts). The unavoidable practical implication of this is that it will force auto insurers to price coverage based upon use of only OEM parts, because the insurer has no control over what a lender, leasing agency, and manufacturer may dictate in their leases and warranties.



Additionally, SB 823, SD1 will ultimately lead 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 insurance 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).

NAMIC is also concerned that the proposed amended legislation shall be applied to all vehicles that are not more than 10 years old at the time of the collision. Based upon the age of vehicles in the state, this provision is really just a fancy way of saying that the OEM parts requirement shall apply to the vast majority of vehicles in the state. This qualifying provision isn’t going to provide any appreciable benefit to consumers, because it will create a new pricing and underwriting burden for insurers, that will lead insurers to treat every auto insurance policy, regardless of age of vehicle, as an OEM parts required policy.

Although the proposed amended legislation is being pitched as merely a consumer disclosure and choice bill, the language of SB 823, SD1 will for all practical purposes require insurers 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. However, this bill will eventually require *all insurance consumers* to subsidize the cost of a mere auto repair preference of a *small number of consumers*, who already possess the option of paying, at the time of the auto repair, for the increased cost of OEM parts.

For the aforementioned reasons, NAMIC respectfully requests a **NO VOTE on SB 823, SD 1, because it is special interest legislation that would benefit auto manufacturers and repair shops 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, if you would like to discuss NAMIC’s written testimony.

Respectfully,

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

March 12, 2019

The Honorable Takashi Ohno Chair
Committee on Interstate Commerce
415 South Beretania Street
Honolulu, HI 96813

RE: SB 823 SD 1

Dear Chair Ohno,

Prism Group LLC opposes Senate Bill 823 SD 1

This new version of Senate bill 823 clarifies and defines many terms that were ambiguous in the previous version. But the current draft has flaws. The first one being that it attempts to solve a non-existent problem. In the testimony provided earlier, no testimony provided an actual account of an aftermarket crash part rendering an Advance Driver Assist System (ADAS) or Safety System inoperable or dysfunctional here in Hawaii or nationally. From personal experience Prism Group has never had a part returned because it rendered an ADAS or safety system inoperable or dysfunctional. This is an amazing statistic since this technology has been around for approximately 10 years and Prism Group has been selling aftermarket parts for the last 7 years. Proper repair procedures, especially the last step of repair verification will detect if a crash part, whether aftermarket or OEM is defective and causing an ADAS or safety system to be inoperable or dysfunctional. It is these procedures that determines if a vehicle has been repaired properly and is working to manufacturer's specifications. So, if done correctly, a vehicle should never leave a repair shop with a dysfunctional or inoperative ADAS or safety system. It is not the parts but rather the procedure that is critical in repairing a vehicle. With respect to consumer safety, a repair shops knowledge and ability to execute the proper repair procedures take far greater precedent than the use of aftermarket crash parts.

The way section 2 and 3 is written, each using the word "affect" which is ambiguous and open to many interpretations. This shot gun approach needs to be refined so that consumers, body shops and the insurance companies will have solid guidelines when a claim is made. For example, if section 2 read as follows "Specify that an insured consumer who chooses the use of an original equipment manufacturer crash part that by design conceals a sensor used by the consumer's ADAS or safety system shall not be required to pay the additional". By specifying the parts that the consumer will not have to pay the difference all parties, consumer, body shop and the insurance providers will be on the same page. Thus, avoiding future disputes. If the above example were used and in the future technology dictates that the law needs to be changed, so be it. The hard thing about laws regarding technology is that it is inherently dynamic.

Currently the only real and verifiable issue, is the need to provide insureds adequate disclosure regarding the use of aftermarket crash parts for a repair. Body shops are unfairly put in the middle of

any dispute between the insured and the insurance company. What is even worst is that they are at times, the ones that have to explain to the insured that aftermarket crash parts are going to be used to repair their vehicle. This burden should not be put on the body shop. It should be the responsibility of the insurance company. I hope the insurance companies take it upon themselves to implement procedures and guidelines that would satisfy the legislature and avoid the need for government regulation.

Thank you

Mike Yang
Prism Group LLC

SB-823-SD-1

Submitted on: 3/13/2019 7:57:22 AM

Testimony for IAC on 3/14/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Florek	Kraftsman Auto Body	Support	No

Comments:

Vehicle repairs are becoming very challenging with all the safety systems placed in modern vehicles. Consumers are reluctant to pay the cost difference and using parts not manufactured by the car maker can compromise safety.

Testimony from Dale Matsumoto, President of Auto Body Hawaii, Kailua-Kona
In support of SB823 SD1; Relating to Motor Vehicle Repairs
House Committee on Intrastate Commerce
Thursday, March 14, 2019, 8:30 a.m. Room 430

Aloha Chair Ohno, Vice-Chair Kobayashi and Members of the Committee,

My name is Dale Matsumoto, I am the President and a co-owner of Auto Body Hawaii, located in Kailua-Kona on Big Island of Hawaii. We are a family owned and operated company that has been in business for over 43 years and I have been honored to have been able to personally continue taking care of people in repairing their vehicles along side of our team of technicians since 1979. As my wife says, though we repair vehicles, we are really in the customer service business, it just so happens that we repair cars... so for us, people do come first. We are well known for our high quality standards in repairing vehicles and also hold high quality standard of excellence in continuous training for our entire staff. We are known throughout the collision industry, in our community, in this State, the Nation and in different parts of the world. We have attained the prestigious Gold Class status by I-CAR, which according to I-CAR, only approximately 20% of collision repair shops in the nation have attained. I-CAR's Gold Class designation lets you know that a collision repair shop has trained technicians who know how to repair your vehicle properly. We were the first and only Authorized Aluminum Collision Repairer for Jaguar in the State of Hawaii in 2004. We were also the first and only Certified Collision Repairer for Mercedes-Benz in the State of Hawaii in 2005. And currently we are the only Certified Collision Repairer for Honda, Acura and Nissan on the Big Island. We are also the only collision repairer for aluminum vehicles on the Big Island since 2003. Our technicians, including myself, are I-CAR trained, ASE certified and, we have also attained our Hawaii State mechanic's licenses.

As does the vehicle manufacturers, high quality and safety has and always will be our focal point when repairing vehicles, therefore on behalf of myself, our entire staff and Auto Body Hawaii, I am sincerely honored to testify in support of SB823 SD1.

With the technological advancements in the way today's vehicles are designed and built, the only proper way to repair today's vehicles are to follow the vehicle manufacturer's specific repair procedures, which also includes the use of their Original Equipment Manufacturer (OEM) parts. No vehicle manufacturer has ever recommends the use of non-OEM parts. Especially now in today's world, 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 (aka Air Bags), Adaptive Cruise Controls, Automatic Braking Systems, Collision Avoidance Systems, Blind Spot Detection Systems and many more utilizes electronic control modules, sensors, lasers and infra-red thermal cameras that many times are integrated within each other (see page 3) and its proper operation can be compromised by not following the manufacturer's repair procedures and the use of non-OEM parts. Especially in today's advanced vehicles, the use of non-OEM parts does not allow for a safe, high quality repair.

Most insurance companies, and all of the Hawaii based insurance companies do not mandate the use of LKQ or aftermarket parts, they understand the quality and safety aspects of following recommendations set forth by the vehicle manufacturers. There is only one insurance company in the State of Hawaii that consistently mandates the use of aftermarket parts. The current HRS 431:10C-313.6 unjustly transfers the cost of proper and safe collision repairs to Hawaii's consumers. Though not in its entirety, SB823 SD1 does

address these issues. And in reality no statute should have to address this, as the choice of which type of parts are to be used to repair a vehicle, should be the owner of the vehicle, and furthermore this should be addressed at the time of the insurance policy purchase or policy renewal, not at the time of the accident, which SB823 D1 addresses.

Though I do not agree that any consumer must pay for the cost difference between a “like kind and quality” part and an original equipment manufacturer part, I do find comfort that “claimants” has been removed, which I am in strong support of.

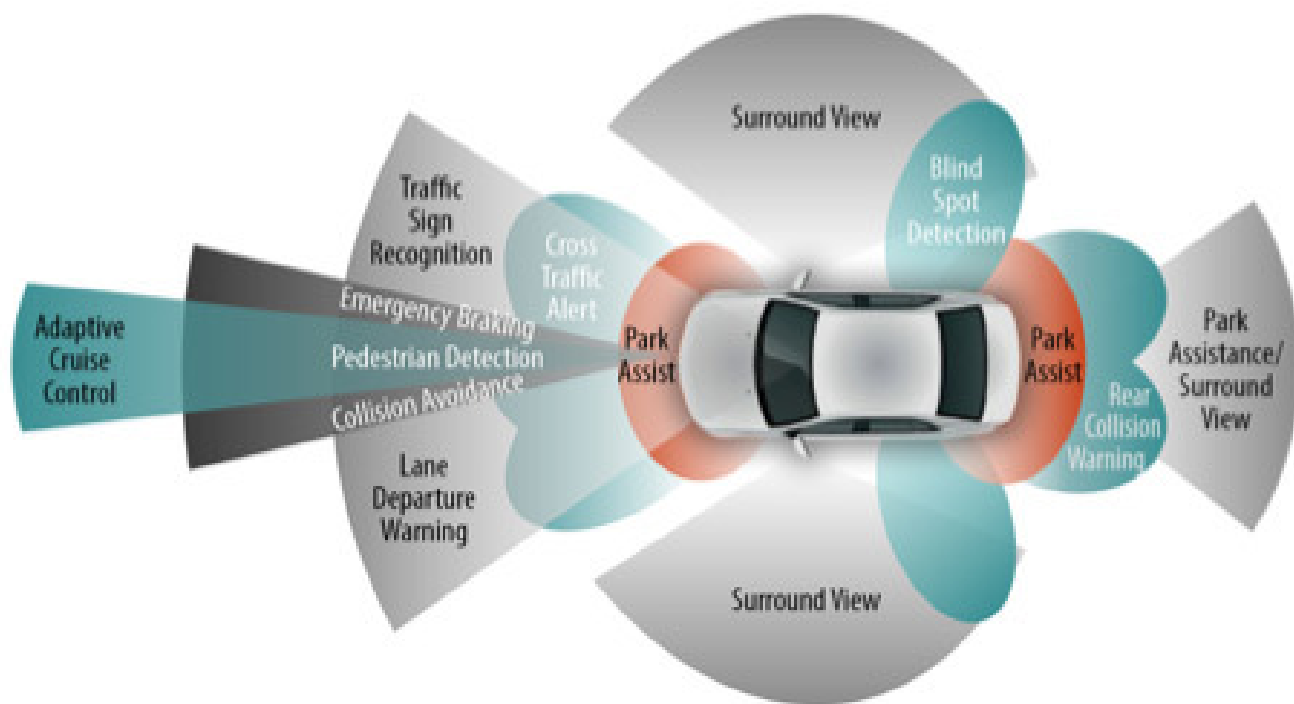
In February of 2010, SB2022 which addressed the use of Salvaged (Used) Airbags was successfully and rightfully defeated, basically due to consumer safety reasons. The current HRS 431:10C-313.6 intent was based on insurance premium cost savings but it does not take into consideration the safety aspect for Hawaii’s consumers, especially with today advanced vehicles. SB823 SD1 addresses consumer safety... and safety should never be a concession.

Thank you for supporting and allowing SB823 SD1 to be heard and thank you for allowing me to testify in support of SB823 SD1.

Dale Matsumoto, President
Auto Body Hawaii
73-5601 Maiau Street
Kailua-Kona, Hawaii 96740
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 service

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





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

TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER ALASKA & HAWAII
711 Kapiolani Blvd., Suite 300 ■ Honolulu, HI 96813-5238 ■ Email: tdayton@geico.com
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COMMITTEE ON INTRASTATE COMMERCE

Rep. Takashi Ohno, Chair
Rep. Dale Kobayashi, Vice Chair
Thursday, March 14, 2019; 8:30 a.m.
Room 430

HB405 - RELATING TO Motor Vehicle Repairs

Chair Ohno, Vice Chair Kobayashi and Members of the Intrastate Commerce Committee

My name is Timothy M. Dayton, General Manager of GEICO, Hawaii's largest auto insurer. **GEICO opposes SB823 SD1 in its current form.** GEICO insures over 270,000 vehicles in Hawaii; it is pretty certain that we are the largest user of like kind and quality parts (LKQ) in the State. SB823 is well intended but overly complicated, ambiguous and contains several blatantly inaccurate premises in Section 1. SB823 SD1 as currently drafted will most likely be a de facto elimination of non OEM part distributors in Hawaii and thereby increase the premium for auto insurance in Hawaii for many consumers.

Parts availability

Almost 100% of original equipment manufactured parts (OEM) must be ordered from the mainland. Almost 100% of LKQ parts are stocked locally. Most commonly, auto insurance covers 30 days of rental while a vehicle is being repaired. Due to delays in ordering and shipping of parts, we are already faced with consumer complaints; eliminating or severely restricting LKQ will make matters worse. Of greater concern is the day that a major hurricane strikes Oahu. Unless we can prepare by having a majority of parts stocked in Hawaii, GEICO

estimates that it would be 6 to 12 months for all vehicle repairs to be completed and even that assumes Honolulu Harbor is relatively functional. Hawaii needs to address local availability of motor vehicle crash parts as an urgent concern.

Price

Insurers and two different Insurance Commissioners have repeatedly raised concerns in 2018 and again this year that elimination of LKQ parts will cause auto insurance premiums to increase yet various body shop owners assert that it will not have that impact. We leave it to the Committee to decide who is in the best position to forecast the impact.

A major factor in the parts issue is that consumers/insurers in 49 states (including Alaska) pay MSRP for OEM parts. In Hawaii, we pay MSRP for all OEM plus a markup to 125% to 135% of MSRP. Currently each consumer has a choice to pay for the higher priced OEM part if they so wish. Pretty much no one does because the price difference between the LKQ compared to MSRP multiplied by the markup is prohibitive. Perhaps if OEM parts were fully stocked on island there could be some justification for this unique markup due to the increased costs of storage in Hawaii vs. other states; absent that there is no justification for the markup.

Elimination of what little competition there is for OEM dealers will make the situation worse. I would liken it to Hawaii becoming the first state to eliminate generic drugs and prescriptions. GEICO respectfully suggests that this pricing mark-up issue be appropriate for consideration by The Committee on Intrastate Commerce.

Safety

GEICO has specified use of LKQ parts in Hawaii for many years. We have fully warranted these parts. Yet we are not getting customers coming back to replace defective LKQ parts that were installed. It is a small number of vocal repair shops that are pushing this proposal and not

all shops agree even though it would increase their profitability. If the Bill were amended to prohibit any markup over MSRP in Hawaii, insurers would most likely support the measure.

Would those shops that currently are pushing the proposal withdraw their support?

GEICO fully supports the proposal on Driver Assisted Collision Avoidance. In fact, we would suggest taking it a step further and prohibiting any insurer from specifying LKQ for these parts absent specific consumer request/consent. We do object to the inclusion of the ambiguous term *safety systems*. If one GOOGLES Types of Motor Vehicle Safety Systems, what comes up are all of the systems that are covered by collision avoidance.

The current law already specifies that the LKQ part must be of equal or better quality and it must be warranted by the insurer at least as good as the equivalent OEM part warranty. In addition GEICO fully supports the change in Section (2) (c) that makes clear that any LKQ part shall be certified and tested.

Disclosure and Choice

GEICO fully agrees that every consumer should have an opportunity to make an informed choice. The option proposed in SD1 is not the way to go about it. The vast majority of policies are sold over the phone or on-line rather than in person and consumers are already challenged to really make informed decisions. Full disclosure is the most logical approach. Testimony on this parts issue has repeatedly pointed out that there are several carriers who never use anything but OEM. Such disclosure by each insurer should be in both the policy contract language and more visibly should accompany the declarations page provided at every new and renewal policy.

With full disclosure of how each individual insurer treats parts replacement, the consumer who wishes to can opt for one of the higher priced alternative carriers. Given the almost complete lack of consumers choosing to pay the higher price for OEM in a repair and the fact that GEICO

keeps growing and also is selected year after year as Hawaii's Best Auto Insurer (Star Advertiser and Honolulu Magazine Reader Polls) it seems predictable what most will choose.

Section 1

SB823 SD1 states that *many motor vehicle insurers do not allow insured consumers to decide whether repairs are made with after market crash parts or original equipment manufacturer crash parts*. This is a clear violation of the current Statute and we question inclusion of this assertion without the legislature having specific knowledge of such blatant violations.

In summary, GEICO respectfully requests that the **Committee hold SB823 SD1** as it clearly needs further consideration and significant work. Specifically parts legislation should also consider:

- is there price gouging for OEM parts,
- the consumer impact in repair delays due to lack of OEM parts and
- most importantly hurricane preparation. \

If the Bill is moved, we request that the different issues raised in our testimony be considered.

Thank you for the opportunity to submit our thoughts on this measure.

Sincerely,



Timothy M. Dayton, CPCU

SB-823-SD-1

Submitted on: 3/13/2019 7:33:16 AM

Testimony for IAC on 3/14/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Linnell Heneralau	Individual	Support	No

Comments:

Yes, I am in support of Bill SB 823.

SB-823-SD-1

Submitted on: 3/13/2019 8:24:51 AM

Testimony for IAC on 3/14/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Matsumoto	Individual	Support	No

Comments:

I am in support of bill SB823.

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 SB823 SD1 – Relating to Motor Vehicle Repairs
COMMITTEE ON INTRASTATE COMMERCE
Thursday, March 14, 2019

LATE

Chair Ohno, Vice-Chair Kobayashi and members of the Committee on Intrastate Commerce. I am here to testify in strong support of the intent and purpose of SB823 SD1.

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 has legislation that **REQUIRES CLAIMANTS TO PAY THE INCREASED COST OF ORIGINAL EQUIPMENT MANUFACTURED" CRASH PARTS IN BODY REPAIR.**

HRS § 431:10C-313.6 that SB823 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. SB823 SD1 correctly removes the claimant from this legislation.

HRS § 431:10C-313.6 applies only to **CRASH PARTS** and **DOES NOT APPLY** to the vast majority of 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** and crash parts is a very small percentage of the Aftermarket industry.

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 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, or to avoid a collision altogether. 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 SB823 SD1 and I would like to address them at this time.

The Insurance Commissioner's threat of an increase in premiums is the code word for LESS PROFIT FOR INSURERS and shows a poor understanding of collision repair, the small amount of aftermarket crash parts as a percentage of the cost to repair, and its effect on premiums.

- Property Casualty Insurers Association of America reported if all aftermarket parts (this includes tires, mufflers, 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. **Aftermarket crash parts, is a small percentage of the total aftermarket parts used in automotive collision repair.**
- 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.
- Geico testimony indicated that Hawaii is currently 26th or in the middle as it concerns premiums and this is good, but it is not because of the use of aftermarket crash parts.
- Local insurance companies like First Insurance, Island Insurance, Dtric and some national insurers like State Farm, Progressive and All State, do not make Hawaii insureds or claimants pay the difference and yet they compete against GEICO in our market.

The threat of an increase in total losses, therefore increasing premiums is not true.

- Aftermarket Crash Parts makes up a very 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 all aftermarket parts is only 3.93% of the total cost, and crash parts is a small percentage of the 3.93% aftermarket parts used. This plays a very small factor in declaring a car a total loss because it is a very small percentage of the total cost.
- Local insurers and many national insurance companies already pay for OEM Crash Parts and they continue to operate profitably.

The threat that this legislation will lead to an OEM monopoly and increased OEM part prices.

- OEM part prices, MSRP, or 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 SB823 SD1 will have any effect on the MSRP. Hawaii is 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 and are not a part of the safety system.

Aftermarket crash parts are of like kind and quality.

- In the automotive industry, the term “like kind and quality” refers to used or recycled original equipment parts and not “aftermarket”, generic, or counterfeit parts, not manufactured by the original equipment manufacturer.
- In reality many CAPA Certified aftermarket crash 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, as it relates to the vehicle’s safety & crash avoidance systems.
- 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 SB823 SD1 is about self-interest, greed and profit.

Support for SB823 SD1 is about consumer protection, safety and looking after the consumer’s interests and safety.

Thank you for allowing me to testify in support of SB823 SD1.

Van Takemoto
President, Island Fender
807 Ilaniwai Street,
Honolulu, Hi 96813
van@islandfender.com

and on behalf of the:

The Automotive Body and Painting Association of Hawaii.

Relating to Motor Vehicle Repairs
COMMITTEE ON INTERSTATE COMMERCE
THURSDAY, March 14, 2019



Chair Ohno, Vice Chair Kobayashi and members of the Committee on Intrastate Commerce.

I am here to testify in strong support with the purpose of SB823 SD1.

My name is Sabrina Dela Rama, I am the manager of Tony Group Collision Center and a Board of Director for the Automotive Body and Paint Association of Hawai'i. I have been doing Collision repair for 30 years and we are a Licensed repair dealer shop, a certified OEM repairer, an I-CAR Gold Class shop, all our collision technicians are certified in all metal welding (Steel, Aluminum and Silicone Brazing) and I am an I-CAR Platinum individual as well. Our company invests in continued training and equipment's that is needed to repair today's vehicles.

I would like to explain why SB823 SD1 is needed to correct an obsolete law written in 1997, HRS 431:10C.313 when written was about cosmetic parts, today's vehicle is built on safety avoidance systems and crash avoidance energy. What does this all mean? Well, today's vehicles have radars and sonars that reads through certain thickness of plastics to avoid accidents and or transfers energy through the metal and crush zones to move or absorber impact, it will lessen the impact which lessens injury and damages, The crash zone allow the parts to slow energy down, it also sends the impact energy up and over or down and under the vehicle to avoid the occupants from feeling the shock or being injured. Here is DATA by the IIHS on crashes decreasing because of all these technology safety features on cars. It shows 50% less rear end collision's alone. **SEE attachments last pages; EXHIBIT A**

I have pulled data that shows a decrease in deaths crashes, although population is higher year after year and millions more of miles driven from 1997-2017, this data was from The Insurance Institute for Highway Safety/Highway Loss Data Institute. IIHS shows dramatic drops in crashes and deaths each year, which means less risk, less cost in repairs and less injury claims. **SEE attachments last pages EXHIBIT B**

Premiums make up many different aspects, 1-is body injury, 2- is death, 3- is Uninsured, 4- underinsured, 5- is comprehensive and the last is collision repair. Collision repair is only a small % of the overall cost to our premium and out of that % of repaired vehicles, ONLY 60% of all accident victims will repair their vehicles and out of that small repair %, only 25% of the overall repair bill is parts.

Now that cars are being built safer and smarter, we will have a dramatic decrease in collision repair cost, injury cost and death cost benefits, fewer accidents means less cost to insurance companies risk. Here is the statistics since 431:10C-313 was in place and every 10 years after:

- 1997, deaths-**42013**, miles driven-**2,560,373**, Rates per deaths vs miles **1.64**
- 2007, deaths-**41259**, miles driven-**3,032,399** Rates per deaths vs miles **1.36**
- 2017, deaths-**37133**, miles driven-**3,212,347** Rates per deaths vs miles **1.16**
- **SEE ATTACHMENTS FOR STATISTICS-VERY INTERESTING DATA**

There are many insurance companies and 3 of the local carriers that don't use A/M (Generic) part for their damage analyzes and yet, they are very competitive in our market. The most that concerns me with the current law is that it includes 3rd party consumers (innocent claimants). I also have concerns for consumers with Leased vehicle. HRS: 431:10C-313 causes the Lease to be in breach of their contract. I've read many lease agreements and they "require" repair must use OEM parts or a certified collision shop. Imagine you're the claimant (3rd party) and Geico's insured hits you, with 431:10C-313 you are liable to pay the difference and if you don't have money to pay for someone else's fault you may have just breached your lease agreement if (Generic) parts are used. You have NO choice with the obsolete 1997 law.

I support SB823 SD1 because it does remove the claimants and addresses the safety concerns for consumers.

When consumers hear the would "like kind in quality" they are expecting the exact same fit, finish and integrity part as what was built on their vehicle. "Aftermarket" parts are; "generic", as a consumer a reasonable person knows the difference between a aftermarket (generic) vs an Like kind in quality part. The current law states; "LKQ" but in fact no one can prove such generic parts are LKQ. As a professional, I can show you why the A/M generic parts are NOT Like kind in quality just from documents I've pulled from CAPA'S website. See attachments, in one-month CAPA has "DE-CERTIFIED" many parts that was previously once considered CERTIFIED. How does CAPA de-certify these parts, by independent shops going on the CAPA website and registering a part. This takes a lot of time for shops to do, guess how many really does it. Imagine how many "aftermarket/generic" parts doesn't get reported? See the 2 pages from CAPA'S website, this is just 1 aspect of the A/M parts, theres so many other issues on that website from CAPA.

I picked a random month from the CAPA WEBSITE-this is only 1 month of "decertified parts". see the CAPA monthly recall report attachments.
EXHIBIT (C) & EXHIBIT (C-1)

Here is the issue with generic DE-CERTIFIED PARTS vs OEM parts, when a generic part is de-certified, it's the "INSTALLER" (**shop**) who has to notify that customer about their car having a DE-CERTIFIED part. However, when an OE manufacture has a re-called part, the OE Manufacture will send out a re-call notice to the owner. The car can be sold 10x's and guess what; the current owner will get that recall letter. How is this done, whenever anyone orders an OEM part, the part department requires the VIN#, they register the part sold to that repairer or consumer to the VIN# and it gets tracked for the life of that vehicle from the OE manufacturer.

CAPA also known as Generic parts manufacturers are only liable for a notice to the public on their website, that means, if you are a repairer that used aftermarket (generic) parts, you need to check the website daily and you must keep track of every file that you have used an aftermarket part on for each repaired vehicle, you must also keep the part number of the generic part, lot number and so on. Do you think Consumers are aware of such a thing? How is that a fair statement that Aftermarket parts are considered to be "LKQ", no comparison just from the registration of the parts alone.

The consumer already "pre" paid a premium in advance to the insurance company, only when they are in a collision are, they fully aware of the aftermarket part cost difference. **"SURPRISE"!!!!!!**

I always use this example to consumers when they find out after they are in a collision and has out of pocket expense. The insurance company made a bet with you (consumer), they (insurance company) said, I bet for X amount of \$'s a month you will NOT get into an accident. You (consumer) said, I will take on that bet and pay you that premium every month. Then the consumer gets into an accident, the insurance company lost that bet and, now the terms of that bet is being changed AFTER THE FACT of a loss or told to the consumer after a loss. As a layperson, you're expecting to be covered for what you felt you paid every month with NO complaints and in advance but once you need to collect on the bet the terms are different. Aftermarket parts are generic parts, policy and law states; "LIKE KIND AND QUALITY", no where in the law does it state "AFTERMARKET" OR "GENERIC". I've read several policies and they also use the term; "LIKE KIND IN QUALITY", they do not use "aftermarket or generic", Why because a reasonable/layperson understand the difference between Generic, aftermarket, fake, counterfeit vs OEM, like kind in quality (OEM recycled) and genuine parts.

Please review the documents I have and look at the over all picture, If you are a 3rd party claimant and leasing a vehicle, you either pay the out of pocket difference for OEM or breach your contract with the lease program.

Here is another example, with the current law, if you have aftermarket parts for the repairs of your car, the law is NOT allowing you to take your vehicle to a certified manufacture shop unless you agree to pay the difference out of pocket. We as a certified shop agreed to repair said vehicle to manufacture standards, Generic parts are not in that standard. Some lease agreements (Honda being 1 of them) says any repairs under the lease agreement has to be repaired at a certified Honda Collision center.

Please Chair Ohno, Vice-Chair Kobayashi and members of the Committee, I am asking you to pass SB823-SD1 and let's update a law that is obsolete.

I want to thank you very much for taking the time to allow me to put in my testimony.

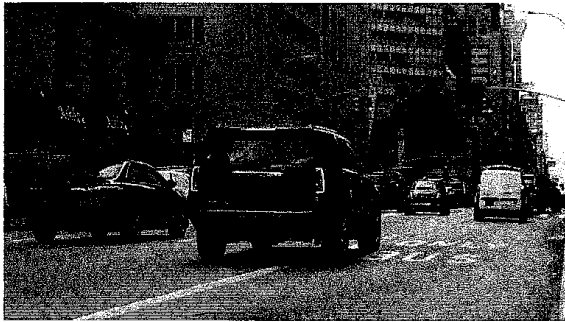
Sabrina Dela Rama
Tony Group Collision Center
Director of;
Automotive Body and Paint Association of Hawai'i.

SEE EXHIBITS BELOW OF A, B, C & C-1



Status Report, Vol. 54, No. 2 | February 21, 2019

Autobrake is good, but it could be better



When it comes to preventing typical front-to-rear crashes, automatic emergency braking is a proven winner. Extending its functionality to address less-common types of rear-end crashes involving turning, changing lanes or striking heavy trucks or motorcycles, for instance, would help maximize autobrake's benefits, a new IIHS study indicates.

Current autobrake systems are designed to address potential crash scenarios involving two passenger vehicles traveling in a line on a dry road at low speeds. The Institute's front crash prevention ratings program, which IIHS launched in 2013, assesses autobrake system performance in this kind of situation in which one vehicle is in danger of rear-ending another. Sixty-six percent of the autobrake systems IIHS has evaluated on 2019 models earn the highest rating of superior for front crash prevention, and nearly 8 percent earn an advanced rating.

Autobrake reduces the frequency of property damage liability claims by 13 percent, rates of rear-end crashes by 50 percent and rear-end crashes involving injuries by 56 percent, studies conducted by IIHS and HLDI have found. Property damage liability coverage pays for damage that an at-fault driver causes to another vehicle.

Although the reductions are impressive, there is more room for progress. IIHS estimates that autobrake could potentially prevent as many as 70 percent of front-to-rear crashes involving passenger vehicles as striking vehicles and 20 percent of all passenger vehicle crashes reported to police.

To see what types of rear-end crashes in which vehicles with autobrake are involved, IIHS researchers examined police crash-report data from 23 U.S. states during 2009–2016 for striking passenger vehicles with and without autobrake among models on which the system was optional. They controlled for driver demographics and vehicle features and used logistic regression to examine the odds that rear-end crashes with various characteristics involved a striking vehicle with autobrake. Autobrake was considered to be less effective at preventing the types of rear-end crashes that were overrepresented among vehicles with the feature and more effective at preventing crash types that were underrepresented.

"Our goal was to identify additional opportunities to increase the effectiveness of autobrake," says Jessica Cicchino, IIHS vice president for research and a study co-author. "The findings will help guide future modifications to our front crash prevention tests to take into account some of these other crash scenarios."

<https://www.iihs.org/iihs/sr/statusreport/article/54/2/2>

3/13/2019

EXHIBIT (A)



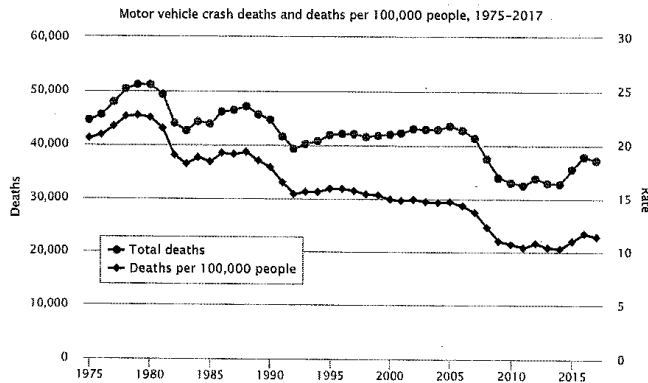
General statistics

Crashes took 37,133 lives in the U.S. in 2017.

The number of people killed in motor vehicle crashes has fallen over the last decade. The death toll in 2017 was 15 percent lower than it was in 2005, when it began a sharp decline.

Fatality rates per population and per mile traveled have dropped even more rapidly. The crash death rate per population has fallen by nearly half since the 1970s and declined 3 percent from 2016 to 2017.

More men than women die in motor vehicle crashes. Men typically drive more miles than women and are more likely to engage in risky practices.



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MONTHLY RECALL REPORT
June 2018*

[Report: P8]
 Monthly

RECALLED DECERTIFIED LOTS

In cooperation with repairers, insurers, distributors, and part manufacturers, CAPA continuously monitors and reviews the quality of parts certified to meet or exceed CAPA standards. The following list includes parts that no longer meet the CAPA standards to which they were originally certified and therefore the following parts have been decertified. CAPA would like to thank you for your support in reporting non-compliance variations regardless of the significance. your assistance assures repairers and consumers they can continue to expect quality collision replacement parts when they see the CAPA seal.

Part lots are expressed in dates. Distributors holding decertified CAPA parts are entitled to a refund, replacement part or credit from the applicable Participant. They can receive one of the above (the Participant decides which) by cutting out the section of the part (a coupon) bearing the CAPA Quality Seal and submitting the coupon(s) to CAPA Headquarters with a completed Recall Reimbursement Form within ninety (90) days of public notice of decertification to CAPA at Recall Report 1000 Vermont Avenue, N.W., Suite 1010, Washington, D.C. 20005 or FAX (202) 737-2214.

CAPA 201 STANDARD - PLASTICS

Manufacturer Number	Application Description	Part Description	Manufacturer	Lot	OEM Number	PartsLink Number
LSB042NDQ	Lexus ES 350, 13-15, w/Parking sensors	Bumper Cover, Rear	Pro Fortune	05/16A	5215933953	LX1100161
LSB042NDQ	Lexus ES 350, 13-17, w/Parking sensors	Bumper Cover, Rear	Pro Fortune	05/16A	5215933943	LX1100161
LX2100000-010C	Lexus IS 250, 06-08, w/o pre collision; w/o headlamp washer	Bumper Cover, Front	AP-Procom	01/18A	5211953925	LX1000163
LX2100000-010C	Lexus IS 350, 06-08, w/o pre collision, w/o headlamp washer	Bumper Cover, Front	AP-Procom	01/18A	5211953925	LX1000163
MZ-04095BBQ	Mazda 6, 06-08, w/o turbo	Bumper Cover, Front	Tong Yang	06/17B	GPYA50031A	MA1000218
MZ-04095BBQ	Mazda 6, 06-08, w/o turbo	Bumper Cover, Front	Tong Yang	06/17B	GPYA50031ABB	MA1000218
Y-DSBP244CA	Nissan Versa Sedan, 12, (P)	Bumper Cover, Rear	Y.C.C.	08/16A	HEM223AN0H	NI1100284
Y-DSBP244CA	Nissan Versa Sedan, 12-16	Bumper Cover, Rear	Y.C.C.	08/16A	HEM223AN0J	NI1100284
TY-04402BBQ	Toyota Camry Hybrid, 12-14	Bumper Cover, Front	Tong Yang	01/17B	5211906974	TO1000378
TY-04402BBQ	Toyota Camry Hybrid, 12-14	Bumper Cover, Front	Tong Yang	07/17A	5211906974	TO1000378
TY-04402BBQ	Toyota Camry L/E/XLE, 12-14	Bumper Cover, Front	Tong Yang	01/17B	5211906974	TO1000378
TY-04402BBQ	Toyota Camry L/E/XLE, 12-14	Bumper Cover, Front	Tong Yang	07/17A	5211906974	TO1000378
Y-TYBP271HCA	Toyota Corolla, 09-10, (Japan)	Bumper Cover, Rear	Y.C.C.	01/18A	5215912934	TO1100268
TY-04442BBQ	Toyota RAV-4, 13-15, North America Built	Bumper Cover, Front	Tong Yang	11/17B	521190R911	TO1014101
VGB056NBQ	Volkswagen Jetta Hybrid, 13	Bumper Cover, Rear	Pro Fortune	12/16A	5C6807421GRU	VW1100189
VGB056NBQ	Volkswagen Jetta Sedan, 11-13, w/o Parking assist	Bumper Cover, Rear	Pro Fortune	12/16A	5C6807421GRU	VW1100189
VG0940000-200C	Volkswagen Passat, 12-15	Bumper Cover, Front	AP-Procom	08/17A	561807217BGRU	VW1000199
324-1102L-UC7	Lexus ES 350, 07-09, w/o HID	Headlamp Assy, L	DEPO	20170410	8117033670	LX2502134
GM1106663DSC	Chevrolet Impala, 06-16	Bar, Impact	PBSI-DS	11/17A	25865729	GM1106663
GM1106663DSC	Chevrolet Monte Carlo, 06-16	Bar, Impact	PBSI-DS	11/17A	25865729	GM1106663
FDB7081APT	Ford F250/F350 Pickup, 11-16, Paint to match	Bumper, Front	Auto Power	11/17A	BC3Z17757CPTM	FO1002417
FDB7081APT	Ford F450 Super Duty Pickup, 11-16, w/o Bumper end caps, Paint to match	Bumper, Front	Auto Power	11/17A	BC3Z17757CPTM	FO1002417

CAPA 202 STANDARD - NON-WOVEN FABRICS

Manufacturer Number	Application Description	Part Description	Manufacturer	Lot	OEM Number	PartsLink Number
NONE						

CAPA 301 STANDARD - LIGHTING

Manufacturer Number	Application Description	Part Description	Manufacturer	Lot	OEM Number	PartsLink Number
NONE						

CAPA 501 STANDARD - BUMPER PARTS

Manufacturer Number	Application Description	Part Description	Manufacturer	Lot	OEM Number	PartsLink Number
NONE						

CAPA 601 STANDARD - RADIATORS

Manufacturer Number	Application Description	Part Description	Manufacturer	Lot	OEM Number	PartsLink Number
NONE						

*This report includes all decertifications from May 1, 2018 through May 31, 2018.

All CAPA Reports including the recall report are available on the CAPA website at www.capacertified.org.

If you would like to download this report directly from the website and wish to be removed from this distribution list, please contact CAPA at jillian.rahal@intertek.com.



MONTHLY RECALL REPORT
June 2018*

[Report: P8]
 Monthly

RECALLED DECERTIFIED LOTS

In cooperation with repairers, insurers, distributors, and part manufacturers, CAPA continuously monitors and reviews the quality of parts certified to meet or exceed CAPA standards. The following list includes parts that no longer meet the CAPA standards to which they were originally certified and therefore the following parts have been decertified. CAPA would like to thank you for your support in reporting non-compliance variations regardless of the significance. your assistance assures repairers and consumers they can continue to expect quality collision replacement parts when they see the CAPA seal.

Part lots are expressed in dates. Distributors holding decertified CAPA parts are entitled to a refund, replacement part or credit from the applicable Participant. They can receive one of the above (the Participant decides which) by cutting out the section of the part (a coupon) bearing the CAPA Quality Seal and submitting the coupon(s) to CAPA Headquarters with a completed Recall Reimbursement Form within ninety (90) days of public notice of decertification to CAPA at Recall Report 1000 Vermont Avenue, N.W., Suite 1010, Washington, D.C. 20005 or FAX (202) 737-2214.

CAPA 101 STANDARD - METALS

Manufacturer Number	Application Description	Part Description	Manufacturer	Lot	OEM Number	PartsLink Number
HD-20053AQ	Acura TL, 04-08	Hood	Tong Yang	03/18A	60100SEPA90ZZ	AC1230112
S0807H000AS	Acura TL, 04-08	Hood	Jui Li	03/18A	60100SEPA90ZZ	AC1230112
CVQN10FL1	Chevrolet Equinox, 10-11	Fender L	Gordon	10/17A	20859528	GM1240364
CVQN10FL1	Chevrolet Equinox, 10-17	Fender L	Gordon	10/17A	22846917	GM1240364
FD-03031AQ	Ford Focus Sedan/Hatchback, 12-14	Radiator Support	Tong Yang	11/17B	CP928A284A	FO1225214
FD-03031AQ	Ford Focus Sedan/Hatchback, 12-16	Radiator Support	Tong Yang	11/17B	CM5Z8A284A	FO1225214
FD-03031AQ	Ford Focus, 14-18	Radiator Support	Tong Yang	11/17B	CM5Z8A284ACP	FO1225214
FD-03031AQ	Ford Focus, 14-18, Hybrid	Radiator Support	Tong Yang	11/17B	CM5Z8A284ACP	FO1225214
HDCV12FR1	Honda Civic Coupe, 12-13	Fender R	Gordon	05/17A	60211TR6305ZZ	HO1241181
HDCV12FR1	Honda Civic Hybrid, 12-14	Fender R	Gordon	05/17A	60211TR6305ZZ	HO1241181
HDCV12FR1	Honda Civic Sedan, 12-15	Fender R	Gordon	05/17A	60211TR6305ZZ	HO1241181
HDCV12FR1	Honda Civic, 12-13	Fender R	Gordon	05/17A	60211TR6305ZZ	HO1241181
HDCV12FR1	Honda Civic, 12-14	Fender R	Gordon	05/17A	60211TR6999ZZ	HO1241181
KA5510150-000C	Kia Sorento, 11-15	Hood	AP	01/18A	664001U000	KI1230126

CAPA 201 STANDARD - PLASTICS

Manufacturer Number	Application Description	Part Description	Manufacturer	Lot	OEM Number	PartsLink Number
Y-GMBP339CA	Chevrolet Avalanche, 07-11, w/off road pkg	Bumper Cover, Front	Y.C.C.	01/18A	15946214	GM1000830
Y-GMBP339CA	Chevrolet Avalanche, 07-13, w/off road pkg	Bumper Cover, Front	Y.C.C.	01/18A	25830185	GM1000830
GMCIMPA-R06NEW	Chevrolet Impala LS/LT, 06-11	Bumper Cover, Rear	Micro Rim	C3817	19120960	GM1100735
GMCIMPA-R06NEW	Chevrolet Impala, 08, 50th Anniversary	Bumper Cover, Rear	Micro Rim	C3817	19120960	GM1100735
Y-GMBP339CA	Chevrolet Suburban, 07-10	Bumper Cover, Front	Y.C.C.	01/18A	15946214	GM1000830
Y-GMBP339CA	Chevrolet Suburban, 07-14	Bumper Cover, Front	Y.C.C.	01/18A	25830185	GM1000830
Y-GMBP339CA	Chevrolet Tahoe, 07-11, w/off-road pkg	Bumper Cover, Front	Y.C.C.	01/18A	15946214	GM1000830
Y-GMBP339CA	Chevrolet Tahoe, 07-14, w/off-road pkg	Bumper Cover, Front	Y.C.C.	01/18A	25830185	GM1000830
CV-04247BBQ	Chevrolet Traverse, 13-14	Bumper Cover, Front Upper	Tong Yang	09/17A	22899627	GM1014107
CV-04247BBQ	Chevrolet Traverse, 13-17	Bumper Cover, Front Upper	Tong Yang	09/17A	23328140	GM1014107
CR29-9915-WSH	Chrysler 300 Sedan, 11-12, w/Parking Sensor	Bumper Cover, Front	Tran Hung	04/17A	68127939AA	CH1000A01
CR29-9915-WSH	Chrysler 300 Sedan, 11-12, w/Parking Sensor	Bumper Cover, Front	Tran Hung	04/17A	68127939AD	CH1000A01
CR29-9915-WSH	Chrysler 300 Sedan, 11-14, w/Parking Sensor	Bumper Cover, Front	Tran Hung	04/17A	68127939AE	CH1000A01
DG-04141BBQ	Dodge Challenger, 11-14	Bumper Cover, Front	Tong Yang	11/17A	68109836AB	CH1000994
Y-CRBP029PGC	Dodge Dakota, 01, (USA) paint to match, w/o R/T, w/fog	Bumper Cover, Front	Y.C.C.	01/18A	5073221AA	CH1000925
Y-CRBP029PGC	Dodge Dakota, 03-04, paint to match, w/Fog Lamps	Bumper Cover, Front	Y.C.C.	01/18A	5073221AA	CH1000925
Y-CRBP029PGC	Dodge Durango, 03, w/fog lamps	Bumper Cover, Front	Y.C.C.	01/18A	5073221AA	CH1000925
FD-07223GAQ	Ford Excursion, 05, Chrome	Grille	Tong Yang	12/16A	5C3Z8200BAA	FO1200456
FD-07223GAQ	Ford Excursion, 05, Chrome	Grille	Tong Yang	12/16A	6C3Z8200BC	FO1200456
FD-07223GAQ	Ford F-Series Super Duty XLT/Lariat/Outlaw Pickup, 05, w/o Chrome Pkg	Grille	Tong Yang	12/16A	5C3Z8200BAA	FO1200456
FD-07223GAQ	Ford F-Series Super Duty XLT/Lariat/Outlaw Pickup, 05, w/o Chrome Pkg	Grille	Tong Yang	12/16A	6C3Z8200BC	FO1200456
FD-07363GAQ	Ford Taurus, 13-16	Grille, Outer	Tong Yang	08/17A	DG1Z8200SA	FO1202104
HDB083NBQ	Honda Civic Hybrid, 06-08	Bumper Cover, Front	Pro Fortune	01/18A	04711SNEA90ZZ	HO1000239
HDB083NBQ	Honda Civic Sedan, 06-08, 1.8L eng	Bumper Cover, Front	Pro Fortune	01/18A	04711SNEA90ZZ	HO1000239
Y-HDBP214CA	Honda Civic Sedan/Coupe, 16-18	Bumper Cover, Front	Y.C.C.	01/18A	04711TBAA00ZZ	HO1000306
Y-HYBP031CA	Hyundai Elantra Sedan, 14-15, Korea built	Bumper Cover, Rear	Y.C.C.	01/18A	866113X700	HY1100202
Y-HYGR017CPC	Hyundai Sonata, 11-12	Grille	Y.C.C.	07/17A	863503S100	HY1200154
IFB002NDQ	Infiniti FX35, 09-13, w/o Premium pkg	Bumper Cover, Rear	Pro Fortune	10/16A	HEM221CA0H	IN1100134
IFB002NDQ	Infiniti FX37, 09-13, w/o Premium pkg	Bumper Cover, Rear	Pro Fortune	10/16A	HEM221CA0H	IN1100134
IFB002NDQ	Infiniti QX70, 14, w/o Parking sensors	Bumper Cover, Rear	Pro Fortune	10/16A	HEM221CA0H	IN1100134
KA-04014BBQ	Kia Sportage, 05-07, w/Luxury Pkg.	Bumper Cover, Front	Tong Yang	10/17A	865111F001	KI1000130

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EXHIBIT (C-1)



LATE

To: The Honorable Takashi Ohno, Chair
The Honorable Dale T. Kobayashi, Vice Chair
House Committee on Intrastate Commerce

From: Mark Sektnan, Vice President

Re: **SB 823 SD1 – Motor Vehicle Repairs**
APCIA Position: OPPOSE

Date: Thursday, March 14, 2019
8:30 a.m., Room 430

Aloha Chair Ohno and Members of the Committee:

The American Property Casualty Insurance Association (APCIA) is opposed to SB 823 SD1 which could inappropriately limit the use of non-original equipment manufacturer (OEM) 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.

APCIA strongly supports legislation to ensure that autos are appropriately repaired after an accident. Existing state law requires insurers to guaranty the crash part for the life of the motor vehicle and to ensure the part is of like kind and quality to the OEM part. Consumers are well served by this protection. Bills that foster the false narrative that OEM parts are the only parts consumers should use chip away at existing consumer protections and could lead to increases in auto insurance rates.

Most, if not all OEMs recommend exclusive use of their parts for the simple reason 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 of the state's auto insurance policyholders.

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, leading consumer group 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.”

SB 823 SD1 also presents some operational issues. The bill requires insurers to provide a “clear choice” to consumers between using a like kind and quality crash part or the OEM parts. Since very few insurers pay for OEM parts when equal quality, lower costs parts are available, this language seems to require all insurers in Hawaii to offer both types of policies.

In addition, the bill assumes that OEM parts will be available for ten years. In many cases, these parts will not be available. Using Non-OEM parts can be the difference between a car that is deemed repairable and one that is considered a total loss. Most insurance companies offer their insureds a choice – paying more for OEM parts or accepting aftermarket 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.

In the last decade, in an effort to further block competition for replacement parts, the auto industry has exploited the U.S. patent system by using design patents to restrict competition for replacement parts – at the expense of consumers and businesses. Every year, tens of thousands of vehicles and light trucks are repaired with non-OEM parts.

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. Insurers sometimes use aftermarket parts in repairs because they cost less while providing the same quality. Savings resulting from this practice have been passed on to consumers over many years with no impact on safety in Hawaii.

For these reasons, APCIA asks the committee to **hold** this bill in committee.

In Their Own Words

Federal Law:

LKQ Corporation Late
Testimony Exhibit 1 of 5

General Motor: “If a Chevrolet part fails due to a defect in material or workmanship not related to an aftermarket product or the labor to install it, Chevrolet would be responsible for covering the failed part.”



Federal law prohibits companies from invalidating warranties for the use of generic/Aftermarket parts.

Magnuson-Moss Warranty Act

- Federal Trade Commission Improvement Act, section 2302 (a)

Ford Motors: “Installation of a non-genuine Ford item...does not, in and of itself, render our warranty void.”



Dodge Motors: “Certain changes that you might make to your truck do not, by themselves, void the warranties described in this booklet. Examples of some changes are: installing non-Chrysler parts, components, or equipment.”



In Plain English... This act provides that the placing of a competitive replacement part on an automobile does NOT affect the warranty on the remaining parts.

MAGNUSON-MOSS WARRANTY ACT

Public Law 93-637

93rd Congress, S. 356

January 4, 1975

LKQ Corporation Late
Testimony Exhibit 2 of 5

700.9 Under Section 104(a)(1) of the Act, the remedy under a full warranty must be provided to the consumer without charge. If the warranted product has utility only when installed, a full warranty must provide such installation without charge regardless of whether or not the consumer originally paid for installation by the warrantor or his agent. However, this does not preclude the warrantor from imposing on the consumer a duty to remove, return, or reinstall where such duty can be demonstrated by the warrantor to meet the standard of reasonableness under section 104(b)(1).

700.10 Section 102(c).

- (a) Section 102(c) prohibits tying arrangements that condition coverage under a written warranty on the consumer's use of an article or service identified by brand, trade, or corporate name unless that article or service is provided without charge to the consumer.
- (b) Under a limited warranty that provides only for replacement of defective parts and no portion of labor charges, section 102(c) prohibits a condition that the consumer use only service (labor) identified by the warrantor to install the replacement parts. A warrantor or his designated representative may not provide parts under the warranty in a manner which impedes or precludes the choice by the consumer of the person or business to perform necessary labor to install such parts.
- (c) No warrantor may condition the continued validity of a warranty on the use of only authorized repair service and/or authorized replacement parts for non-warranty service and maintenance. For example, provisions such as, "This warranty is void if service is performance by anyone other than an authorized 'ABC' dealer and all replacement parts must be genuine 'ABC' parts," and the like, are prohibited where the service or parts are not covered by the warranty. These provisions violate the Act in two ways. First, they violate the section 102(c) ban against tying arrangements. Second, such provisions are deceptive under section 110 of the Act, because a warrantor cannot, as a matter of law, avoid liability under a written warranty where a defect is unrelated to the use by a consumer of "unauthorized" articles or service. This does not preclude a warrantor from expressly excluding liability for defects or damage caused by such "unauthorized" articles or service; nor does it preclude the warrantor from denying liability where the warrantor can demonstrate that the defect or damage was so caused.

STATUS REPORT

INSURANCE INSTITUTE
FOR HIGHWAY SAFETY

Vol. 45, No. 11, Nov. 3, 2010

ARE AFTERMARKET PARTS AS SAFE AS ORIGINAL EQUIPMENT?

That's the question many consumers ask at the collision repair shop. Aftermarket parts are easier on the wallet, but debate has swirled for years over whether these third-party components are comparable to ones straight from automakers. For things like fenders, grilles, and bumper covers, the issues are mainly cosmetic — fit, finish, and wear. These parts don't affect vehicle strength in a collision and are irrelevant to crash safety, as the Institute



LATE TESTIMONY

January 2001

MOTOR VEHICLE SAFETY

NHTSA's Ability to Detect and Recall Defective Replacement Crash Parts Is Limited



GAO

Accountability * Integrity * Reliability

LATE TESTIMONY

NHTSA's Authority Over Aftermarket Crash Parts and Recycled Airbags

The Motor Vehicle Safety Act gives the Secretary of Transportation broad authority to prescribe safety standards to reduce traffic accidents, deaths, and injuries on the nation's roads. The act authorizes the Secretary to prescribe safety standards for new motor vehicles and motor vehicle equipment.¹⁰ The Motor Vehicle Safety Act prohibits, in part, the manufacturing, selling, and importing of new vehicles and new vehicle equipment that do not comply with NHTSA's safety standards. These provisions could apply to both new OEM and new aftermarket crash parts since new parts are classified as new motor vehicle equipment. Although NHTSA has the authority to regulate aftermarket crash parts, the agency has not determined that these parts pose a significant safety concern and therefore has not developed safety standards for them. According to agency officials, the agency has not developed safety standards for aftermarket crash parts because

- testing by IIHS concluded that the use of aftermarket crash parts does not affect vehicle safety;
- problems with aftermarket crash parts tend to focus on the fit and finish of the parts, rather than on safety;
- the agency has not identified any trends in the complaints it receives about the safety of aftermarket crash parts and recycled airbags; and
- those who voiced concerns about the use of aftermarket crash parts, including manufacturers of original replacement parts, have not provided conclusive evidence that aftermarket crash parts pose a significant safety concern.

The act's provisions that apply to aftermarket parts do not apply to recycled airbags because they are used rather than new equipment. For used vehicles, the Motor Vehicle Safety Act directs the Secretary to prescribe safety performance standards for used motor vehicles, in order to encourage and strengthen state motor vehicle inspection programs. Under this provision, the agency could elect to develop safety standards for occupant restraint systems, which might incorporate airbags. NHTSA has not developed such standards because it has not identified significant problems with occupant restraint systems that could be addressed by state motor vehicle inspection programs. The agency has, however, determined that water damage can undermine the performance of airbag systems. Through its defect investigation process, NHTSA has identified several

¹⁰The Secretary has delegated the authority over these matters to NHTSA.