

Approved March 15, 1989
Date

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rex Crowell at
Chairperson

1:30 ~~xx~~ p.m. on January 24, 1989 in room 519-S of the Capitol.

All members were present ~~except~~:

Committee staff present:

Bruce Kinzie, Revisor of Statutes
Hank Avila, Legislative Research
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Mr. Art Weiss, Deputy Attorney General
Mr. Norman Sherbert, General Motors Corporation
Mr. Pat Barnes, Kansas Motor Car Dealers Assn.
Mrs. Pat Wiechman, Kansas Automotive Dismantlers & Recyclers
Mr. Ted Hite, Hadl Collision Repair
Mr. Bill Eveland, Eveland Bros., Inc.
Mr. Leigh Nichols, Motor Vehicle Manufacturers Assn.
Mr. Gary Pauley, State Farm Insurance Company

The meeting was called to order by Chairman Crowell, and the first order of business was a briefing by Hank Avila concerning the interim study on HB-2015 which deals with after market parts.

Hank Avila explained that HB-2015 relates to the use of after market parts in the repair of automobiles, and prohibits an insurer from requiring the use of after market parts in the repair of motor vehicles unless the parts are at least equal in quality to the original part in terms of fit and performance.

Mr. Art Weiss, Deputy Attorney General, testified in favor of HB-2015. (See Attachment 1)

He said Attorney General Robert Stephan supports HB-2015, and believes Kansas consumers should not be required to have ill-fitting, poorly made replacement parts used on their vehicles simply to save insurance companies money on repairs at the expense of the consumer's vehicle.

Mr. Norman Sherbert, General Motors Corporation, testified in support of HB-2015. (See Attachment 2)

Mr. Sherbert recommended that in New Section 1, a phrase be added stating "...which are not made by the original equipment manufacturer."

Mr. Pat Barnes, Kansas Motor Car Dealers Association, spoke as a proponent on HB-2015. (See Attachment 3)

Mrs. Pat Wiechman, Kansas Automotive Dismantlers and Recyclers Association, testified in support of HB-2015. (See Attachment 4)

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S Statehouse, at 1:30 ~~xx~~/p.m. on January 24, 1989.

Mr. Ted Hite, Hadl Collision Repair, testified as a proponent on HB 2015. (See Attachment 5)

Mr. Bill Eveland, Eveland Bros., Inc., spoke in support of HB-2015. (See Attachment 6)

Mr. Leigh Nichols, Motor Vehicle Manufacturers Association, spoke in support of HB-2015. (See Attachment 7)

Mr. Gary Pauley, State Farm Insurance Company, spoke in opposition to HB-2015.

Committee discussion and questioning was held.

The meeting was adjourned at 3:30 p.m.


Rex Crowell, Chairman



Weiss

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

TESTIMONY OF ARTHUR R. WEISS

DEPUTY ATTORNEY GENERAL

BEFORE THE SPECIAL COMMITTEE ON TRANSPORTATION

HEARING ON HOUSE BILL 2015

JANUARY 24, 1989

Mr. Chairman and Members of the Committee:

Attorney General Stephan supports House Bill 2015. Kansas consumers should not be required to have ill-fitting, poorly made replacement parts used on their vehicles simply to save insurance companies money on repairs at the expense of the consumer's vehicle.

It is a continuing goal of Attorney General Stephan that Kansas consumers receive proper disclosures. The disclosure outlined in new section 3 will accomplish this purpose. We applaud the provision in this bill requiring that disclosure be made to consumers in the event an estimate for body repairs has been prepared based on the use of automobile parts not made by the original manufacturer.

Attach. 1

Early on in the discussions on this issue there was testimony on both sides of the question of whether non-original equipment manufactured parts are as good as those made by the vehicle's manufacture. We take no position in this debate, but merely point out that the committee, through this bill, has protected the consumer. Companies should be prevented from using sub-standard parts.

Failure to provide the disclosure required in section 3 should be a violation of the Kansas Consumer Protection Act. We would suggest, however; that this bill become a separate section of the Kansas Consumer Protection Act rather than an amendment to K.S.A. 50-626. That section outlines deceptive acts or practices. K.S.A. 50-626 is a list of specific illegal practices; while this bill requires an affirmative step on the part of body shops and insurance companies.

In conclusion, Attorney General Stephan supports House Bill 2015 and encourages its addition to the Consumer Protection Act.

Thank you for your consideration and this opportunity to appear before you.

HOUSE BILL No. 2015

HB 5
Sherbert

By Special Committee on Transportation

Re Proposal No. 44

12-22

AN ACT concerning motor vehicles; relating to the repair thereof; concerning the use of after market parts; disclosure; amending K.S.A. 50-626 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. As used in this act, "after market part" means sheet metal or plastic parts which generally constitute or provide support for the exterior of a motor vehicle, including inner and outer panels, WHICH ARE NOT MADE BY THE ORIGINAL EQUIPMENT MANUFACTURER.

New Sec. 2. No insurance company shall require the use of after market parts in the repair of a motor vehicle ~~unless the after market parts are at least equal in quality to the original part in terms of fit and performance.~~ WITHOUT DISCLOSING THE INTENDED USE OF SUCH PARTS TO THE INSURED.

New Sec. 3. Any person who prepares an estimate of the cost of motor vehicle repairs shall disclose to the owner of the motor vehicle, either on the estimate or on a separate document attached to the estimate, the following information in at least 10-point type:

THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. ~~PARTS USED IN THE REPAIR OF YOUR VEHICLE BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUAL IN QUALITY IN TERMS OF FIT AND PERFORMANCE TO THE ORIGINAL MANUFACTURED PARTS. THEY ARE REPLACING PARTS USED IN THE REPAIR OF YOUR VEHICLE BY OTHER THAN THE ORIGINAL MANUFACTURER. PARTS MANUFACTURED OR DISTRIBUTOR RATHER THAN BY THE MANUFACTURER OF YOUR VEHICLE OR THE INSTALLER OF THE PARTS.~~ WARRANTIES, IF ANY, APPLICABLE TO THESE REPLACEMENT CRASH PARTS ARE PROVIDED BY THE ORIGINAL MANUFACTURER OF THE VEHICLE OR THE MANUFACTURER OF THE PARTS.

All after market parts installed on the motor vehicle shall be clearly

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Statement Before The
HOUSE COMMITTEE ON TRANSPORTATION AND UTILITIES

By The
KANSAS MOTOR CAR DEALERS ASSOCIATION

Tuesday, January 24, 1989

Re: Proposal No. 44 - Automobile After Market Parts
House Bill No. 2015

Mr. Chairman and Members of the Committee, I am Pat Barnes, legislative counsel for the Kansas Motor Car Dealers Association, representing our 333 member franchised new car and truck dealers.

It is not uncommon for new car and truck dealers to now have extensive body shop operations as part of their full sales and service facilities. As with many independent auto body shops and rebuilders, our members will necessarily have to comply with any law dealing with the use and disclosure of "after market" parts in vehicle repairs. Over the past several years the use of quality versus sub-standard exterior repair parts, whether real or perceived, has grown to the point where it now creates problems which essentially catch our auto body repairmen in the middle.

With the interim study of this particular problem, House Bill 2015 has emerged which we can support. The major components of the bill are: (1) prohibiting insurance companies from unilaterally forcing consumers to use sub-standard parts, (2)

Attach-3

requiring the estimator to disclose non-OEM parts, (3) and providing for Consumer Protection Act enforcement of the law.

Although we generally do not favor burdensome disclosure requirements for our operations, the one proposed here seems to be the most expeditious route for addressing the problem. It is also fair in that in order to provide liability for failing to make the disclosure statement, there would have to be a knowing failure. We believe this is fair because in the course of day-to-day business pressures and in seeking to serve and please customers, particularly on busy days, anyone can make the slight human mistake of forgetting to staple a disclosure on an estimate or otherwise overlooking the acknowledgment of a non-OEM part.

Is there a problem? We have heard of situations where there have been problems with repair and replacement parts being misrepresented or not working well with the repair job. Some of these parts originate overseas and can be of sub-standard quality and harder to work with. We are also aware of disputes between consumers and their insurance companies about how repairs are to be made, or what was expected. In fact, this is a primary area where this arises.

In fact, among those dealers having body shops with whom I have discussed this problem, nearly every one of them has acknowledged the existence of the problem. Nearly every one of them feels powerless to do anything about the problem. For example, when the customer has his 1987 Chevrolet repaired after a collision, the customer may not consider the car to still be a

1987 Chevrolet if it doesn't have a Chevrolet part on it. The customer should have the choice of the repair while being fully aware of the cost differences, if any. To further underscore the problem, many of our members have expressed a fear of openly discussing the problem as many of them do a great deal of insurance repair business and have expressed concern about openly discussing the problems they have encountered with these issues.

Obviously, we will not object to a bill which actually promotes and endorses the use of parts which are members regularly sell. Our members are more familiar with these parts and have indicated they are easier for them to work with. Regardless of this fact, the ultimate goal is to preserve competition and still provide the consumer with the choice he is entitled to receive.

Present law provides little protection for consumers. This is particularly true since insurance companies are exempt from the Consumer Protection Act and unfair claims settlement practices generally must be more widespread than a particular incident.

This is a law which is designed to prevent consumers from being forced to have something that they do not want. It is also designed to avoid an increase in bookkeeping for small companies. This bill will further cooperation between consumers, body shops and insurance companies with regard to the desirability of the parts being used.

As the interim report indicated, a number of states have

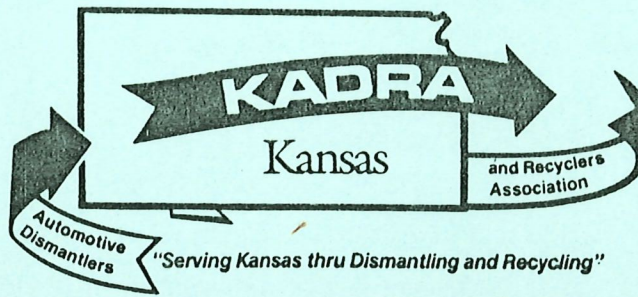
taken steps to solve the dispute that we have been discussing. This bill goes a long way toward providing consumers with some fairness in the choice of repairs they have and allowing body shops to help them make that choice. However, no one should assume that this bill will solve all problems.

For example, even though new Section 2 prohibits insurance companies from requiring the use of after market parts unless they are of equal quality to the original parts, most consumers will not have the expertise and resources to challenge this determination if they disagree with it. If that particular provision is to have value, then it should also either reference a penalty or be described as a deceptive insurance act or practice prohibited under the insurance licensing laws. Alternatively, Section 2 of the bill could be amended to require consumer consent to the use of non-OEM parts.

We also believe the notice to the consumer should be more specific as we now know original factory warranties will not apply to these parts. Additionally, the body shop should be excused from warranty liability on these parts since it has little control over the choice of parts, and certainly none over engineering and safety standards. The notice for disclosure should be changed to do this.

In closing, I would simply state that despite the additional disclosures which are provided in this particular instance, the overall impact of the bill appears to be favorable. In our view, the body shop is not where this problem has

originated, but it is now the battle ground where the problem arises. Body shops, as legitimate businesses, should not be caught in the middle of this struggle. We have been frank with you about our concerns regarding this issue. We consider this to be very important legislation to our industry.



HOUSE TRANSPORTATION COMMITTEE

January 24, 1989

HOUSE BILL NO. 2015

Mr. Chairman, Members of the Committee:

I am Pat Wiechman, executive secretary for the Kansas Automotive Dismantlers and Recyclers Association.

The concept of HB 2015 originated during the 1988 Session in the form of Senate Bill 523. That bill was originally introduced by Senator Winter at the request of concerned constituents. After consideration in the Senate Committee, the matter was held over to be addressed by the Interim Committee as Proposal No. 44. A considerable amount of testimony was presented during the summer. With compromises that appeared to be agreeable to the various parties, the resulting recommendations have been presented in HB 2015.

The K.A.D.R.A. Board of Directors have met at length discussing the issue of after market parts. Additionally, at the international convention of the Automotive Dismantlers & Recyclers Association, the issue of after market parts was considered in depth. It is the position of the members of our state association, as well as, that of the international

Executive Office

1101 W. 10 Topeka, Kansas 66604

913 - 233-1666

Attach. 4

association that OEM (original equipment manufacturer) parts provide the consumer with repair parts that are equal in quality to the parts originally installed by the manufacturer. If non-OEM parts are used in the repair of vehicles, the consumer has the right to know that the vehicle is being repaired with parts other than those manufactured by the original equipment manufacturer. We believe that industry, both insurance and repair, has the responsibility to inform the consumer that non-OEM parts, after market parts, are being used in the repair of the vehicle.

Additionally, we believe that the consumer should have the right to accept or reject the use of after market parts in the repair of his vehicle. We suggest that language similar to that be added to New Sec. 2 of HB 2015.

It is important to note that there are two kinds of OEM parts, new parts and used parts. Both are manufactured by the original equipment manufacturer. Both new and used are OEM parts.

To address the remaining parts of HB 2015, New Sec. 3 speaks directly to the disclosure provisions that both our state and national associations have endorsed.

New Sec. 4 would put this under the Consumer Protection Act and give the consumer recourse. However, it

should be noted that the Consumer Protection Division of the Attorney General's Office has no authority over the insurance industry. That industry is regulated by the Insurance Commissioner. Therefore, the provisions set out in HB 2015 would apply only to the repair facility or to the supplier of the parts. HB 2015 does nothing to give the consumer the right to reject or accept the use of either OEM or after market parts.

K.A.D.R.A. urges your favorable support of HB 2015; and we suggest that language be added to New Sec. 2 giving the consumer the right to accept or reject the use of either OEM or after market parts in the repair of the vehicle.

"The consumer shall have the right to accept or reject the use of either OEM parts or after market parts in the repair of his vehicle."

Thank you for the opportunity to appear before you and express our Association's position. If you have any questions, I will be happy to try to address them.

Respectfully submitted,

Patricia M. Wiechman
Executive Secretary

January 27, 1989

Mr. Chairman, Members of the Committee:

My name is Ted Wite, I am the owner of Hadl Collision Repair in Lawrence, and the State Director for the Society of Collision Repair Specialists, "S.C.R.S."

Let me begin by simply explaining what "OEM" parts are, that's Original Equipment from the Manufacture, such as a Ford fender on a Ford car or Truck, or Chevy, or any other original part.

Aftermarket or imitation as we call them are sheet metal parts such as doors, fenders, hoods etc., that are usually made in Tiwain as a copy of the original parts.

Imitation parts are being forced on the consumer by the insurance companies without the knowledge of the consumer. If they do know and prefer OEM parts they must pay the difference themselves.

I'm showing you a copy of a computer estimate made by an insurance company, as you can see, it is a maze of things most people could not understand.

Where it says, Quality replacement part that I have underlined, that is actually an aftermarket part. The consumer would not know this.

At one of the Senate hearings where I described a situation where, if your new car was hit by someone with State Farm Insurance as an example, they would want to repair your car using an imitation part, if legislation is not passed. One of the Senators asked the State Farm representative, "If my new Toyota were involved in an accident what kind of a fender would you put on it?" He answered uh, uh, a quality part!

In other words not what she had on her car before the accident!

Why would I take off work from a very busy business to come up here? We are motivated from the heart! We are sincere in our efforts to produce a product to the consumer that will please him. We want his car to look as though nothing ever happened to it. We take great pride in our craftsmanship and the end product.

We would make a higher gross profit by using aftermarket parts, but we know they would compromise the repair.

We have no problem with Like, Kind and Quality, "L.K.Q", this refers to used parts, but original equipment used parts.

The insurance companies and those people who have a warehouse full of these parts say they are the same. If that's true, let them produce one. Major collision repair shop owners who agree with them say they are the same, fit the same, look the same and last the same.

If these parts rust out prematurely as every manufacturer's brochure says they do, then let's look at the cost to the Kansas Consumer when he has to replace a fender. We'll use an 1987 Ford Escort as an example. (See attached copy)

As you can see the insurance company is out nothing, the supplier of this eighty-five dollar fender is out \$40.00 approximately. The Kansas Consumer is out \$518.75, that's what it costs to buy an original fender, do all the procedures necessary, and pay for materials to paint it. All of this for a savings to the insurance company of \$34.42.

If the Kansas Consumer decides to trade his car in, it will be worth much less because the fit and finish of aftermarket parts is very obvious.

We believe that the Kansas Consumer should not be forced by any insurance company to accept poor quality parts. We believe his car should be repaired with exactly what he had.

We believe anyone preparing an estimate for repair should disclose to the consumer on a separate document that the consumer should sign, that the estimate includes aftermarket parts, and may void his warranty.

I worked in my first shop when I was 14 years old. I never have seen anyone from any insurance company ever inspect a car after repairs to see if it was done to any degree of accuracy or quality. It is obvious to me that their interest in this is purely selfish.

Hadl Collision Repair

Ted K. Hite, owner

3401 W. 6th St. Lawrence, KS 66044
843-8991

PROFESSIONAL DAMAGE REPORT

NAME Kansas Consumer

DATE 1-24-89

ADDRESS _____

INSURANCE _____

PHONE _____

PARTS ORDERED _____

YEAR MODEL	MAKE OF CAR	BODY TYPE	SERIAL NO	PAIN NO
87	Ford	ESCORT		
RE-PAIR PLACE	REF	LABOR	PARTS	SUBLET AND MATERIAL
X left front fender Remove & inst all for access! transfer A front bumper B. " inner skirt C. wheel D. Side moulding	2.8	2.0	119.42	<u>-OEM</u>
X under coating Remove & Replace trim items on adjacent panel for color blending to achieve color match Cover car for panel overspray Refinish Two Stage color match & Blend	.9 2.0 5.7	.6 .3 .3 .3 .3 2.0 .3		8 ⁰⁰ 6 ⁰⁰ 79 ⁸⁰

REPAIR WORK must be paid in full when car is picked up. No exceptions. **DON'T ASK.**

Current Rate of Daily Storage charged when vehicle is left past 2 weeks of completion date.

OEM Fender 119.42
Immitation " 85.00
SAVING TO INS. Co. 34.42
↑
TRUE COST TO Replace TO consumer

MISC SHOP SUPPLIES	
WRECKER SERVICE	
FRAME OR UNIBODY	
6.1 REPAIR LABOR	146 40
SUBLET WORK AND MATERIAL	93 80
PARTS	119 42
5.7 REFINISH LABOR	136 80
TOTAL	496 42
TAX	22 33
GRAND TOTAL	518 75

MATERIAL AND PARTS PRICES SUBJECT TO CHANGE
ADDITIONAL WORK REQUESTED, OR REPAIRED WILL BE ADDITIONAL

Eveland Bros., Inc.

of Overland Park

Mr. Chairman and Members of the Committee:

I would like to introduce myself, I am Bill Eveland President of Eveland Brothers Body Shop, Inc. My business is located in Overland Park, Kansas at I-35 and Antioch. I have worked in the automobile repair industry for the past 27 years. I have been in business 11 of those 27 years. I am active in two professional organizations nationally, SCRS and Collision Industry Conferences.

I come to you today to discuss the issue of aftermarket parts vs original equipment parts. I will attempt to prove to you there is a difference, not only in price, as the insurance company will point out, but also in the quality, fit, function and longevity of such parts. I will use a Toyota park lamp and a replacement aftermarket, made in Taiwan, park lamp to substantiate my testimony. These two lamps are supposed to be exact replacement for one another.

Difference in aftermarket vs O.E. Toyota part i.e. Park & Signal Lamp
THE AFTERMARKET LAMP:

- 1) Does not meet D.O.T. standards, NOT certified.
- 2) Has no manufacture identification.
- 3) Bulb too small, looms or candlepower too low.
- 4) Has no silver reflector inside, looms too low.
- 5) Has no lens gasket, (will leak and corrode).
- 6) Has no weather protection at socket base (outside).
- 7) Has no weather protection at plug.
- 8) Plug is incorrect, cannot be installed on vehicle without modifications.
- 9) Is not marked inside to indicate proper bulb to be used. USA or Europe application.
- 10) Lens is a different color.
- 11) Is not packaged in individual box.
- 12) Does not have attaching parts with light.

These 12 items I have mentioned are obvious short comings of the Taiwan aftermarket parts vs the original equipment parts. These differences are representative of the quality and differences of aftermarket vs O.E. parts. Many of the differences I have pointed out are not just a visable cosmetic difference, but will affect how well the part will perform its job or function, and how long it will last.

Collision Repair Specialists

5033 MACKAY • OVERLAND PARK, KANSAS 66203 • 262-6050

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Eveland Bros., Inc.
of Overland Park

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January 24, 1989

If your answer was no to any or all of these questions presented, then you must vote for legislation to stop the forced use of these sub-standard aftermarket parts.

Thank you for an opportunity to speak to such a distinguished group.

THANK YOU.

Collision Repair Specialists

5033 MACKEY • OVERLAND PARK, KANSAS 66203 • 262-6050

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Testimony of Leigh Nichols,
Motor Vehicle Manufacturers Association
on HB 2015

Mr. Chairman: My name is Leigh Nichols. I represent the Motor Vehicle Manufacturers Association--a trade association of automobile and truck manufacturers who make vehicles in America.

I would like to make brief comments on H.B. 2015--a bill my organization feels is good for Kansas citizens.

I would like to compliment the House Transportation Committee for the study they have put into this issue. In my opinion it is an issue that has needed attention for some time.

In section 1 of the bill, I would like to suggest the following amendment which would make the section now read:

"As used in this act, 'after market part' means sheet metal or plastic parts which generally constitute or provide support for the exterior of a motor vehicle, including the inner and outer panels, which are not made by the original equipment manufacturer."

In section 3 there appear to be three parts or sentences. The first sentence which says:"THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER" is a statement we wholeheartedly agree with.

The second sentence, "PARTS USED IN THE REPAIR OF YOUR VEHICLE BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUAL IN QUALITY IN TERMS OF FIT AND PERFORMANCE TO THE ORIGINAL MANUFACTURER PARTS THEY ARE REPLACING." This sentence should be deleted because it IS NOT POSSIBLE for aftermarket parts manufacturers to make equal parts because they do not

have the specifications and WILL NOT EVER HAVE THEM. THEY ARE
trade secrets.

We concur with the amendments presented to the committee by Mr.
Sherbert of General Motors.

If I can be of further service, I hope you will call.

Thank you for the opportunity to present comments to the
Committee.

Leigh Nichols

Motor Vehicle Manufacturers Association
429 N.E. 50th Street # 307
Oklahoma City, OK 73105
405-524-6634