

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION COMMITTEE

April 11, 2002
1:33 p.m.

MEMBERS PRESENT

Senator John Cowdery, Chair
Senator Jerry Ward, Vice Chair
Senator Robin Taylor
Senator Gary Wilken
Senator Kim Elton

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 348

"An Act relating to insurance for and work on certain motor vehicle repairs; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 348 - No previous action to record.

WITNESS REGISTER

Ms. Annette Deal
Staff to Senator Cowdery
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced SB 348

Ms. Sandy Bass-Core
Coalition Auto Repair Equality (CARE)
POSITION STATEMENT: Opposes SB 348

Mr. Raymond Warner, Legislative Counsel
Certified Auto Parts Association (CAPA)
POSITION STATEMENT: Opposes SB 348

Ms. Eileen Sohile
Keystone Automotive
National Auto Body Parts Association

POSITION STATEMENT: Opposes SB 348

Mr. John George
National Assn. Of Independent Insurers
3328 Fritz Cove Rd.
Juneau, AK 99801

POSITION STATEMENT: Testified on SB 348

Mr. Ralph Seekins
Alaska Auto Dealers Association
Seekins Ford Lincoln Mercury
Fairbanks, AK

POSITION STATEMENT: Supports SB 348

Mr. Brian Keen
NAPA
Anchorage, AK

POSITION STATEMENT: Opposes SB 348

Mr. Bill Holden
General Motors Corporation
Detroit, MI

POSITION STATEMENT: Supports SB 348

Ms. Beth Rose
Consolidated Auto Body
315 Thomas Circle
Anchorage, AK 99508

POSITION STATEMENT: Supports SB 348

Mr. Rick Morrison
Alaska Auto Dealers Association
Anchorage, AK

POSITION STATEMENT: Supports SB 348

Ms. Gail Barnes, Editor
fuelline.com

POSITION STATEMENT: Opposes SB 348

Mr. Matt Thorpe
Anchorage, AK

POSITION STATEMENT: Supports SB 348

Mr. Wayne Spencer
Alaska Sales and Service
Anchorage, AK

POSITION STATEMENT: Supports SB 348

Mr. Stan Petito
Cal Worthington Ford of Alaska
Anchorage, AK
POSITION STATEMENT: Supports SB 348

Mr. Ron Jones
CARQUEST Auto Parts
Anchorage, AK
POSITION STATEMENT: Testified on SB 348

Mr. Steve Allwine
Alaska Auto Dealers Association
8725 Mallard St.
Juneau, AK
POSITION STATEMENT: Supports SB 348

ACTION NARRATIVE

TAPE 02-15, SIDE A

CHAIRMAN JOHN COWDERY called the Senate Transportation Committee meeting to order at 1:33 p.m. Senators Wilken, Ward, Elton and Chairman Cowdery were present. The committee took up SB 348.

#SB 348

SB 348-MOTOR VEHICLE REPAIRS

MS. ANNETTE DEAL, staff to Senator Cowdery, described the purpose of the legislation as follows.

SB 348 relates to consumer repairs on individual's vehicles for crash or collision circumstances. It addresses two types of parts available, the original manufactured parts and the after market parts. In the case of motor vehicle repairs, consumers are sometimes not provided with full information. Some types of replacement crash parts may be of inferior quality or may void the warranty for adjacent parts. Alternative parts can also create unnecessary safety risks from improper fitting, yet some insurance companies direct the use or installation of parts other than the original parts. Some replacement crash parts are comparable to those manufactured or distributed by the original carmaker. Sometimes professionals have found others to be inferior in terms of fit, finish and quality. SB 348 guarantees that there is a warranty for after market crash parts when they are used in repairs and it also reinforces the consumer's right to have a choice through the consent language. Therefore, SB 348 gives the consumer a choice, when a vehicle is in its original manufacture year or three years thereafter, of using after market

parts or the original parts. The vehicle repair shop must disclose on the invoice when after market parts are used.

CHAIRMAN COWDERY asked what timeframe the bill applies to.

MS. DEAL replied that SB 348 specifies that it applies to the vehicles manufactured that year and three years after. Consent is not required of the owner if the vehicle is older than that.

CHAIRMAN COWDERY noted the presence of Senator Taylor. He then took public testimony.

MS. SANDY BASS-CORE, representing the Coalition for Auto Repair Equality (CARE), informed members that the Coalition represents companies involved in the auto repair market. Those companies in Alaska are NAPA, Midas, CARQUEST, [indisc. - paper shuffling]. These companies combined are found in over 130 locations. The Coalition opposes SB 348 because many similar pieces of legislation have been amended and include car parts as well. The Coalition has found that car dealers and auto body shops have introduced much of this legislation because the car dealer parts cost twice as much as the after market parts, even though after market parts are identical. Ms. Bass-Core said, regarding the warranty issue, in the 1970s, the U.S. Senate passed preemptive legislation that prohibits warranties from being tied to repair so if an after market part is used on a vehicle, it cannot invalidate any of the original equipment manufacturers (OEM) parts or the car's warranty (Magnuson Bond Act). Eighty percent of the after market business is repeat business and studies show that even OEM bumpers do not withstand a 5 mph crash. The Coalition's main concern is that many of its customers are low-income people who often live in rural areas and they cannot afford to pay the car dealer prices or the higher insurance premium.

CHAIRMAN COWDERY asked Ms. Bass-Core to fax her written testimony to the committee. He then asked if 80 percent of the after market business she referred to applies to cars that are three or fewer years old.

MS. BASS-CORE said that is correct. The Coalition is considering the newer vehicles, as well as the older vehicles.

CHAIRMAN COWDERY asked if the 80 percent pertains to all cars or all parts or to the last three of four-year old cars only.

MS. BASS-CORE said the 80 percent of return customers that the after market has covers all vehicles, not just the older cars.

CHAIRMAN COWDERY asked, "So you don't really know the figure that we're talking about, you know, all vehicles versus the last three years that probably 20, 25 year old vehicles still on the road, so?"

MS. BASS-CORE said the average age of a vehicle is 15 years. Most people who drive those vehicles don't want to spend money on new cars.

CHAIRMAN COWDERY thanked Ms. Bass-Core for her testimony and asked Raymond Warner to testify.

MR. RAYMOND WARNER, legislative counsel to the Certified Auto Parts Association (CAPA), informed members that he was testifying on behalf of Jack Ellis, Executive Director of CAPA, the Director of Public Affairs for the Consumer Federation of America, and author of The Car Book, prepared in cooperation with the Center for Auto Safety. Mr. Warner explained that CAPA is a non-profit organization that oversees testing and inspection programs that certify the quality of parts used for auto body repairs and gave the following testimony.

We are here to comment on SB 348 and we appreciate this opportunity. CAPA is a non-profit organization, which oversees testing inspection programs that certifies the quality of parts used for auto body repairs. CAPA's goal is to promote price and quality competition in the crash parts industry, thereby reducing the cost of crash repairs to consumers without sacrificing quality. We simply establish standards for competitive parts in order to insure their equivalency to [indisc.] parts and provide consumers, auto body shops, and insurance companies with an objective method of evaluating their functional equivalency.

Car companies spend millions of dollars to discredit after market parts to scare consumers, [indisc.] body shops, and intimidate legislatures into protecting their monopoly with thinly veiled legislation like SB 348. This state-by-state approach has been adopted by car companies and collision repairers because they were unsuccessful in achieving the same result on a national level when they tried to alter federal design caps in 1993. Supporting this legislation will, in effect, promote a monopoly and destroy the free market that Alaska consumers have traditionally embraced.

CAPA strongly believes that consumers should have the right to have their vehicles repaired to pre-accident condition. We also believe in disclosure, however if disclosure is important for [indisc.] cosmetic crash parts, then it should be even more important for complicated and safety related mechanical parts. Interestingly, most mechanical auto repair shops are against this type of disclosure requirement. Consumers should also have the right to know that the vehicle warranty is not covered on non-car company parts. However, time use of an after market part to the voiding of a new car warranty is definitely fraud against federal law, as Sandy pointed out.

What is at stake here is consumer protection, inherent in a truly free and responsible marketplace. What car companies and body shops are asking this committee to do is attempt to legislate out of business an industry which is forcing them to offer competitive parts. Each year - when this committee endorses this kind of legislation, we're basically saying that the benchmark for quality is the car companies and I think all you need to do is go to your attorney general's office and find out how many citizens complain about car company quality and the number of cars that are recalled. Thank you sir, for giving us this opportunity.

CHAIRMAN COWDERY said he would like to point out that no dealer has ever approached him and that he did not know this issue existed until he heard of consumer complaints and that he did not introduce this bill at the request of anyone.

SENATOR WARD asked if the parts that are not manufactured by the large car manufacturing companies use the same research and development standards.

MR. WARNER explained that some after market parts are certified by CAPA and some are not. By and large, the number of parts certified by CAPA is the smallest percentage, primarily because there is very little incentive for manufacturers to get their parts certified if legislation similar to SB 348 is passed. That legislation does not encourage certification.

SENATOR WARD asked if there would be a "gap" between a fender manufactured by the Ford Motor Company that was tested and the same model fender manufactured by a different company in China.

MR. WARNER said the manufacturers of certified parts are required to participate in a vehicle-testing program in which the part is

installed in a vehicle and tested.

SENATOR WARD clarified that he was wondering if the part made in China would go through the same kind of testing the original part did.

MR. WARNER said it would.

SENATOR ELTON said he didn't realize there is such a "blood feud" between the different parties involved in this issue. He asked Mr. Warner what in this bill goes beyond simply notifying the consumer what kind of parts are going to be used.

MR. WARNER said notification to a consumer that an after market part will be used implies there is something wrong with the after market part when compared to an original equipment manufactured part.

SENATOR ELTON said he sees notification as empowering the consumer to make a choice.

MR. WARNER replied, "When the consumer is told that, for some reason, one part is different from another and will not serve the same purpose, that is a clear direction to that consumer that there is something wrong with the part."

CHAIRMAN COWDERY asked Mr. Warner to fax his testimony to the committee and asked the next witness to testify.

MS. EILEEN SOHILE, representing Keystone Automotive Industries and the National Auto Body Parts Association, said that regarding the question of whether disclosure is discriminatory, SB 348 goes further than that, it speaks to consent of after market parts. Keystone's problem with consent is that it is not only for four to five years, but consent suggests inferiority of after market parts. She noted that many manufacturers that make parts for Keystone also make parts for the car companies. Keystone's manufacturers meet the same standards. There is absolutely no incentive for consumers to choose Keystone's parts when having a car repaired as the result of an accident in a body shop because the consumer is not paying out of pocket. SB 348 will legislate away the industry in Alaska, even though there is a demand for after market parts in Alaska.

MS. SOHILE said that Keystone actually offers better warranties than the car companies. Legislation is not necessary to require Keystone to provide warranties. She repeated that SB 348 will stifle competition, suggests there is no room for competition, and that any safety issues would surround workmanship (installation) and not the parts.

MR. JOHN GEORGE, representing the National Association of Independent Insurers (NAII), said that NAII's primary goal is to keep insurance prices affordable, to have quality repairs done on automobiles that it will continue to insure, and to keep customers happy. SB 348 is preferable to the original version, which was combined with the credit issue. He stated that insurance is a very competitive business.

CHAIRMAN COWDERY interrupted Mr. George to note that SB 348 will require the consumer to be notified of the type of parts to be used, it does not require insurance companies to use certain types of parts. He pointed out that after market parts cannot be required in Minnesota and rates have not risen there.

MR. GEORGE said he would have to look at the situation in Minnesota as a number of factors affect rates. He stated that Hawaii mandates use of after market parts and if a consumer uses an original part, the consumer must pay the difference. He said SB 348 goes a long way in meeting some of the objections NAII had to an earlier bill.

CHAIRMAN COWDERY said the two bills addressed two different issues.

SENATOR WARD asked if NAII rates in Hawaii have been lowered since Hawaii enacted that law.

MR. GEORGE said he believes the rates in Hawaii are actually coming down.

SENATOR WARD asked if that is the result of the Hawaii legislation.

MR. GEORGE responded that he is not aware of when that law was enacted.

SENATOR WARD asked Mr. George to get that information for the committee.

MR. GEORGE said that there are so many factors that affect insurance rates, particularly losses, but that he would get Senator Ward an answer.

SENATOR TAYLOR commented the single biggest factor that affects rates is the current state of the stock market and reinvestment of reserves.

MS. DEAL informed committee members that according to the U.S. General Accounting Office (GAO), consumer approval is required in several states, Hawaii being one. She stated, "...and I have another chart from the U.S. GAO again, from November 2000, and

things could have changed in the last year and a half, but Hawaii seems to require disclosure statements, they seem to - consumer consent is required, an estimate. There are several factors. In fact they're one of the more stringent states on this graph that I have of all 50 states. Once again, this is from November 2000 so it may not be completely current but it is from the U.S. GAO, which I consider a pretty reliable source so..."

MR. GEORGE offered to get more information for committee members.

CHAIRMAN COWDERY repeated that he did not intend to take action on SB 348 at this meeting.

MR. GEORGE said it is true that the investment rate that insurance companies get plays a major factor in the companies' profitability. A company can underwrite at more than a 100 percent loss ratio if investment returns are high. Now that they are not getting high returns, they must get money to pay the claims from the premiums. He noted the insurance companies are not allowed to invest great amounts in the stock market. The Division of Insurance determines what they can invest in. Even so, their investment returns are lower than they were previously.

SENATOR ELTON said the previous witness said that after market parts can be warranted and that SB 348 requires that if the insured requests the insurer must provide a warranty for after market crash parts. He stated if, in fact, some after market crash parts are under warranty that it does not seem like an onerous requirement on the insurance company to require a warranty for the part.

MR. GEORGE said a pass-through warranty is one in which an insurance company specifies that a body shop use a part that has a warranty and so Senator Elton's argument makes sense. But if he means the insurance company actually warrants a part, that is a little more complicated as insurance companies are not in that business. He noted he is not arguing with that portion of the bill.

MR. GEORGE then stated the previous testifier mentioned that some after market parts manufacturers also make original parts. He pointed out that most manufacturers outsource their parts, so just because a part is not stamped from a machine owned by Ford, for example, does not make that part better or worse. He stated that one has to look at the individual part.

CHAIRMAN COWDERY said he understands that, but a lot of parts do not have a stamp of approval from the original manufacturer.

MR. GEORGE said the stamp is not as important as the actual quality of the part.

MR. RALPH SEEKINS, owner of Seekins Ford Lincoln Mercury in Fairbanks and Seekins Ford in Soldotna, informed members that he has been in the body shop business for 25 years in Fairbanks and it appears to him that the committee is on the right track in protecting the consumer by establishing standards to the original manufacturer's quality. He stated that the manufacturers prescribe, for example on a fender, a metallurgical standard, not just a "fit" standard. One can buy two fenders that look the same but one will rust three times faster than the other. For that reason, Seekins tries to stick to the standard of the original manufacturer. He noted that all SB 348 requires is that a standard must be met and guaranteed to the owner of the vehicle. When automobile dealers repair a vehicle, they are required to put on the receipt whether the part is new, re-manufactured, or used. He does not see any problem with also requiring body repair shops to also note the use of after market parts. After market crash parts are less expensive, but his shop knows that many times those parts do not meet standards. He repeated that SB 348 is an attempt to set a standard that the consumer can depend on, and if there is any question that the standard is not being met, the consumer has absolute knowledge up front. He stated the Automobile Association of Alaska supports SB 348.

SENATOR ELTON asked if any insurance companies will not do business with Seekins because his company does not use after market parts.

MR. SEEKINS said he does not have that problem. However, at one time, one of the insurers asked his company to use after market parts because it would be cheaper and he said he would not do that unless the insurance company provided a letter saying it so instructed the owner. The insurance company then backed off. He said in the insurance industry, the primary objective of adjusters is to lower the cost of repairs so without some kind of standard as to what kinds of parts are put on a vehicle, body shops can be put in a position where they are forced to use a lower quality part. He repeated SB 348 allows the use of parts without a warranty but the consumer must be notified in writing.

MR. BRIAN KEENE, sales manager for NAPA, Anchorage, said that NAPA sees SB 348 as a threat to NAPA. He discussed NAPA's business throughout Alaska, which includes sales in major fishing villages, and how SB 348 will affect everyone. He noted the issue is not a war between the auto dealers and after market industry, it is about the consumer. NAPA's car parts always meet or exceed OEM standards. NAPA feels SB 348 will have a negative impact on the working class.

MR. BILL HOLDEN, General Motors, Detroit, stated that General Motors supports SB 348. General Motors believes customers should

always have their vehicles repaired to their original condition. This issue is about the inferiority of the after market parts. In the past, many consumers did not know that their vehicles were being repaired with inferior parts. A few cases stand out, one being a 1999 lawsuit over after market parts for \$1.2 billion against State Farm. The judge imposed a \$730 million punitive damage award under the Consumer Fraud and Deceptions Trade Practices Act on the basis that State Farm's internal documents showed that the insurers knew the after market parts were not of like kind and quality. Also, a Consumer Reports article (February, 1999) tells consumers to stay away from after market parts. The article discussed CAPA's certification process. He urged committee members to read the article, which provides a third party warning to consumers to stay well away from after market parts. He also pointed out that there is no OEM manufacturer that takes and either re-labels, re-brands, or sells anything other than an OEM part. As an example, he stated that GM built Buick Century cars in China some years ago. The metal for those parts was shipped to China because GM could not get the right grade of metal there to make the parts. Also, legislators in other states asked GM to do an evaluation of GM parts versus CAPA parts. A follow-up article written in Collision Week (February 29, 2000 edition) said:

After recent evaluation of CAPA certified parts conducted by General Motors, the company concluded that the CAPA parts fall short of the GM requirements when tested against genuine GM parts. It went on to say tests were conducted for material content, and dent resistance, protective coatings, welds and adhesives...

Now I'll go so far as to say that you can say we did the test so it's probably biased, okay? But that still doesn't give cause, you know, what I just mentioned before about State Farm being sued.

MR. HOLDEN said in virtually every state that enacted some form of consumer protection legislation the insurance in the after market crash parts interested had lobbied against the bill. The primary point they tried to drive home was that such legislation would cause an increase in auto insurance premiums. However history has shown just the opposite to be true. In almost every state where some form of consumer protection legislation has been enacted there have been auto insurance premium rate reductions over the past three to five years. He noted this was from a study made in 2000 so may not be up to date.

MR. HOLDEN concluded that when GM builds a new car they have to meet federally mandated vehicle safety standards. He did not believe that anybody else would create a standard for after market crash parts higher than OEM.

SENATOR WARD asked if GM contracts out for the production of any parts and, if so, whether any of those companies supply the same parts through this other mechanism.

MR. HOLDEN said yes, for tires, spark plugs, shocks and things that can be bought in a NAPA parts store, and companies like Champion may even come to GM and offer up their standards being the threshold. Those are after market parts that GM considers to be "hard parts" or "mechanical parts." However, SB 348 refers to after market crash parts used to repair a vehicle back to its original condition. In those situations, GM is the only one that writes the standard and has the criteria for it. GM has asked for changes to the legislation so that it will never have to share proprietary rights associated with those. In addition, after a part has been made in an assembly plant and the car goes out of production, there is a time period between then and the time that it then leaves a further level of GM support. A division of GM in Pittsburgh takes the old parts and remanufactures new parts from them on virtually the same dies and using the same metal. If the time period is longer, for example 20 years, and the Pittsburgh plant cannot be used, any plant it does use must follow GM criteria and GM stamping. It cannot use that stamping to ever print out another part used or labeled as another brand other than OEM. That is written into people's contracts.

CHAIRMAN COWDERY asked Mr. Holden to fax his comments to the committee. He then asked Ms. Rose to testify.

TAPE 02-15, SIDE B

MS. BETH ROSE informed members she is testifying on behalf of Kenny Miller who is ill. She noted Mr. Miller was the manager of Consolidated Body Works and he owned his own body business for many years. She said she and her husband took over Consolidated Body Works.

CHAIRMAN COWDERY asked Ms. Rose if Consolidated Body Works is an independent company.

MS. ROSE said it is and that they only do auto body repair work and collision repair. She continued by saying that five or six years ago, Mr. Miller ordered two fenders that she showed members. Mr. Miller scuffed up a section of one of the fenders (a CAPA certified part) and applied some of the materials used on roads to prevent accidents. At the end of the day the part had rusted.

CHAIRMAN COWDERY asked what kind of a car the part was made for.

MS. ROSE said the part was made for an F-150 Ford light pick-up.

She noted Mr. Miller took a small pry tool and popped the welds to see if they would withstand his prying. None of the welds popped. He also put some zinc oxide on the regular parts. It has been sitting in her body shop for years and has never rusted. She noted this part was built to last.

CHAIRMAN COWDERY asked which part is heavier.

MS. ROSE said the original is definitely heavier and estimated that it weighs 5 more pounds. She noted the heavier fender is also safer in the case of an accident.

CHAIRMAN COWDERY informed members that Ms. Rose brought the parts to Juneau at her own expense. He asked her to leave the parts for future committees to see.

MS. ROSE said that Mr. Miller wanted legislators to look at the I-CAR Advantage section on page 2. That section describes how energy is absorbed during a crash. She said that her employees have told her that air bag deployment is at risk in the case of an accident. She has not found evidence of that in the current studies but air bags have not been mandatory on vehicles for very long. She said her employees will not put after market crash parts on because they are very concerned about liability. She talked to her insurance agent about using after market parts. The agent said the insurance company would defend the auto body shop if there was an accident but the auto body shop would be the party held negligible.

CHAIRMAN COWDERY asked Ms. Rose to tell committee members about the difference in hoods and the deployment timing of the air bags.

2:26 p.m.

MS. ROSE said she was told when a car is in a front end collision, an after market part used as a bumper will throw the timing off of the air bag deployment. She said the driver's body will hit the steering wheel at which point the air bag will inflate and throw the driver backward at 200 mph in some cases. She said she really takes issue with the people who say that body shops do not want to disclose that they are using after market parts. She said she is testifying because she wants consumers to know and wants to get legislation in place. She said she also takes offense at the remark that profit margins would be much better for the body shops. She said that is not true. Body shops make a certain percentage off of the parts and it is not very much. She said it might make a difference in a business that uses a lot of parts, such as an insurance company.

CHAIRMAN COWDERY asked if body shops make more on labor.

MS. ROSE said that is correct. She added that the comment that low-income people suffer from inferior parts being put on their cars to be irksome because it is those people who have to buy the second hand cars and have to put up with inferior parts.

SENATOR ELTON asked Ms. Rose if insurance companies have contacted her and applied pressure to use after market parts.

MS. ROSE replied, "Absolutely and small shops and medium-sized shops are on the line. Many of the small shops can't afford to always say no. We're in a good fortunate position. We have an excellent working relationship with State Farm, Geico, USAA and other good, reputable companies. But we always have problems with several companies that I'm not - you know, I don't like to be mean. They come in there and they just think that they can tell us what to do - you will use after market parts - and we say oops, sorry, bye."

SENATOR ELTON asked if those insurance companies then take their business elsewhere.

MS. ROSE said that is correct and that she gets the jobs when they come back because the paint starts to come off of the bumper.

CHAIRMAN COWDERY noted that Senator Leman was present.

MS. ROSE repeated that smaller shops have a more difficult time. She added that there is a place for after market parts. Her shop uses their radiators all of the time but her shop is very careful about which ones it uses because structural integrity and safety cannot be compromised.

CHAIRMAN COWDERY asked Ms. Rose to explain how an after market part can affect other original parts in a vehicle.

MS. ROSE answered that her example of the front end collision in a car with an after market bumper shows that if a part in the front is compromised and collapses, it will not provide as much protection for the parts that are behind it.

CHAIRMAN COWDERY asked Ms. Rose if her body shop repairs suspension damage as the result of a collision.

MS. ROSE said it does but she is not sure which after market parts her shop would use for that type of damage.

CHAIRMAN COWDERY asked if a customer needed a right front fender for a 2001 Dodge, whether her auto body shop could get that part from an auto parts store in a timely manner.

MS. ROSE said she believes so but did not know for sure because they did not deal with them.

SENATOR WARD asked Ms. Rose if she was saying that if someone replaced the front portion of a car with non-factory certified parts, that the driver runs a great risk of crashing into the steering wheel faster than the air bag would inflate.

MS. ROSE had been told the air bag would inflate but the driver's body would come forward more quickly.

SENATOR WARD asked if anyone on the teleconference system had further information about the air bag problem.

MR. HOLDEN said that GM has done tests but he did not know whether it produced any conclusive evidence.

MS. SOHILE commented that she has not had a report filed in 50 years of business regarding air bags deploying before they are supposed to because of use of after market parts. The Insurance Institute for Highway Safety recently did a crash test on hoods, and the after market hood crumpled in the exact same fashion as the car company hood and the air bag deployed in the exact same way. She offered to forward a copy of those test results to the committee.

MS. BASS-CORE informed members that CARE participated in the USGAO report on after market parts. The report concluded there were few problems with after market parts. She offered to forward a copy of that report to members. She said NAPA and CARQUEST have their parts manufactured by Dana and Federal-Mogul Corporation, which also make GM parts. Dana Corporation's first customer is GM and NAPA is their second. Dana Corporation will not turn out a bad product. She said the inferiority that is implied by anyone present of after market parts would have to say that the OEM part would also be inferior because it was made by the same company.

MR. SEEKINS said Federal-Mogul Corporation produces original manufactured hard parts such as bearings and gears not crash parts.

MS. SOHILE said there are manufactures that produce after market crash parts who also produce parts for the car companies.

CHAIRMAN COWDERY said the State Farm Insurance case is being appealed. However, the court thought it was reasonable when a person got an insurance policy that person could expect to have the automobile repaired to the condition prior to the accident with the same warranties intact. It was Chairman Cowdery's

opinion the case was lost because of the lack of notification to the consumers. Consumers should be notified if after market parts are to be used.

MR. RICK MORRISON, Alaska Auto Dealers Association, said that SB 348 is not about one product being better than the other product it is about customer choice, competition and knowledge. Over 30 years in the auto industry, he had seen bulletins from manufacturers about after market parts. Manufacturers presented bulletins warning about rejected parts that returned to the market with problems not easily detected.

His daughter's car had needed new fenders and OEM fenders were not available so after market fenders were installed. After two years the front of the fenders were rusted to the point they had to be replaced. The installation work had been of excellent quality but the quality of the metal in the fender was poor. In his experience after market parts had to be replaced more often than OEM parts.

MR. MORRISON informed committee members that manufacturers are required by law to produce an OEM part for up to ten years and make them available. Dealers are required to disclose to the customer whether they are using an OEM or an after market part and are required by the manufacturers to use OEM parts on warranty work. Alaska Auto Dealers Association supports SB 348 because it is about disclosure. Consumers don't know that non-factory parts are being put in their cars and they need to be informed.

MS. GAIL BARNES, Editor, fuelline.com, said she was a behind the scenes advocate for the clean repair industry but not to the desecration of manufacturers of other parts. The archive files on fuelline.com contain many cases relating to repair parts.

MS. BARNES said SB 348 requires the collision repair shop to be responsible for the parts they install. It doesn't spell out what like kind and quality is therefore putting the burden on the collision repair businesses. The body shops have begun to educate their customers and they don't need this liability. If they are directed by an insured to use after market parts and they agree they take full responsibility.

CHAIRMAN COWDERY said this is a contract between the insurer and the consumer. If body shops get consent that ends the future liability.

UNIDENTIFIED SPEAKER said he had talked to Chairman Cowdery's staff about paragraph C. He said what they were probably intending to do was ask the repair shops to provide a copy of the manufacturers warranty rather than to create a warranty from the

repair shop in paragraph C.

CHAIRMAN COWDERY said they were aware of that and it would be changed in a committee substitute.

MR. MATT THORPE said a manufacturer has a standard they would like to be meet and even though they don't manufacture that exact product, they have a standard for their customers. The purpose behind the bill is to let the consumer know exactly what they are receiving so they can make an informed choice.

MR. WAYNE SPENCER, Alaska Sales and Service, a General Motors Dealership in Anchorage, said he had worked there for 23 years, had been a manager in the body shop for 12 years, and was experienced with after market sheet metal parts. Alaska Sales and Service would prefer to use OEM parts because they are a superior produce but when asked by a customer to use after market parts they will install them because they feel it is the customer's decision how they want it repaired. They support SB 348 because it is making the consumer aware of their options.

MR. STAN PETITO, Cal Worthington Ford of Alaska, said SB 348 is a good bill. The customer pays for the insurance and repairs and they are the ones that should make the decisions. He felt putting the limitation of the first year and the following three years of manufacture may create an issue because the insurance companies will place weight on that. When a car is older than that the insurance company will dictate what pat they want installed, whether it be a used or an after market part. There should not be a limitation on that, the choice should be up to the consumer.

MR. RON JONES, CARQUEST Auto Parts, was concerned about placing the liability on the body shops. He said this was an insurance issue and let "the buyer beware." People should buy their insurance from a company that is going to use OEM parts. If the company states otherwise the customer may pay a smaller premium but should possibly expect less results.

MR. STEVE ALLWINE, Alaska Auto Dealers Association, said the Alaska Auto Dealers Association supports SB 348. He explained while original equipment fenders, after market fenders that may be provided by NAPA and CAPA certified fenders had been discussed there is another distribution line that had not been discussed, the independent marketers. Independent marketers may not be in the United States, they could be in Canada, the Philippines or Korea. They market actively to body shops and insurers. SB 348 will protect consumers from this provider.

MR. ALLWINE explained he sells crash parts to body shops. The independent body shop's reputation is paramount and it is in

their best interest to provide the best quality part they can. "As far as the independent body shops go I can tell you unequivocally that I don't know of any of them that would have objections to this bill at all. They go to great lengths to get original equipment parts, crash parts, for vehicles." If the CAPA product is of equivalent quality then they should provide an adequate warranty.

CHAIRMAN COWDERY asked if Mr. Allwine agreed that consent by the customer would take the major liability off the shoulders of the insurance company.

MR. ALLWINE agreed if they had informed the customer and they consented to the part.

CHAIRMAN COWDERY said he would not move the bill out of committee because of the issues that had been brought up. They would wait for written testimony and asked the committee member if there were any suggestions for amendments.

SENATOR WARD asked Mr. Allwine if he was under the impression there are some companies that go on-line and order a part from China or Mexico and utilize that part as part of an insurance repair and the customer is not aware.

MR. ALLWINE said Senator Ward raised a point that he had not considered. He was marketed through his fax machine on a continual basis and this raised an excellent point about potential Internet marketing.

SENATOR WARD said this would only correct the problem with insurance companies.

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SENATOR TAYLOR said they had all heard of "Chop shops" and that cars get stolen for the purpose of marketing their parts. That is an original manufactured part.

MR. ALLWINE said that was correct but that could be a problem when they are forced to disclose the origin of the part.

CHAIRMAN COWDERY said during the drafting of the bill it was suggested they include a provision for cars totaled by an insurance company. The totaled car must be labeled in some way and future insurers must be notified. This provision may be included in a SB 348 committee substitute.

SENATOR TAYLOR said in the landmark decision Avery vs. State Farm the insurance giant was found guilty of consumer fraud and breach of contract, which led to a 1.2 billion dollar lawsuit. It is on

appeal and a decision should be available during the summer of 2002. Another insurance company lawsuit involved Country Companies Insurance and again it was consumer fraud and breach of contract for its practice of mandating the use of after market crash parts in the repair of their insured vehicles. They were enjoined from continuing that policy and enjoined from utilizing CAPA. Senator Taylor read; "The 600 million dollar punitive damage award in the State Farm case was to deter other insurance companies from cheating their insureds the same way State Farm did." There are pending cases against other insurance companies doing the same thing today.

SENATOR TAYLOR read a statement by the plaintiff's lawyer in the State Farm case, Elizabeth Cabraser:

State Farm breached its contract with policyholders for writing estimates for the cheapest parts not parts that would restore their insured's vehicles to pre-loss condition. The insure company relied on a computer to determine the cheapest part. She said a decision State Farm based on cost efficiency that in seeking the cheapest part State Farm committed fraud against it's policyholders as they had promised to insure and to repair the vehicles to the like or same condition. Actually, the words are State Farm promised its policyholders of like kind and quality. She said when State Farm gave a cheaper part the insurance company saved 130 million by doing this.

CHAIRMAN COWDERY said it was under appeal to the Illinois State Supreme Court but there was some unusually strong language from the judges regarding the appeal.

SENATOR TAYLOR commented on Alaska Airlines' 737 model 200 series having brake problems. There were several different times where the brakes froze up or were grabbing and jerking on landings. He wrote directly to the FAA and filed a complaint. He later read where Alaska Airlines received the highest fine ever levied against a United States carrier. Upon examination of the aircraft by Boeing, they found Mexican parts had been used. The brake part did not have the quality of the Boeing part.

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CHAIRMAN COWDERY adjourned the meeting at 3:15 p.m.