

1 NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

2 COMMITTEE HEARING

3 _____)
4 NATIONAL CONFERENCE OF INSURANCE)
LEGISLATORS PROPERTY-CASUALTY)
5 INSURANCE COMMITTEE HEARING ON A)
PROPOSED CERTIFIED AFTERMARKET)
6 CRASH PARTS MODEL ACT)
_____)
7

8 Given before Debbie Rayl, Notary Public for
9 the State of South Carolina, in the conference
10 room of the Mills House Hotel, Charleston, South
11 Carolina, on Thursday, the 28th day of February,
12 2002, commencing at 1:15 p.m.

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1 APPEARANCES

2 PANEL 1

3 JACK GILLIS
Executive Director
4 Certified Automotive Parts Association (CAPA)

5 EILEEN SOTTILE
Director, Government Relations
6 Keystone Automobile Industries/Automotive
Body Parts Association

7 CLARENCE DITLOW
Executive Director
8 Center for Auto Safety

9 PANEL 2

10 SHEILA LOFTUS
Executive Director/Publisher/Editor
11 Washington Metropolitan Auto Body
Association/*Hammer and Dolly*

12 GENE FONDREN
President
13 Texas Automobile Dealers Association

14 KRIS KISER
Vice President, State Affairs
15 Alliance of Automobile Manufacturers

16 PATRICK McGUIRE
Attorney
17 P.J. McGuire, Attorney-at-Law

18 MARK HOYLE
NC/SC UAW CAP President
19 United Autoworkers Association

20 MARK PIERSON
Collision Business Owner/Technician
21 Alliance of Automotive Providers

22 GEORGE GILBERT
Merchandising Manager
23 Ford Motor Company

24 PANEL 3

25 MARK SKINNER
Vice President, State Programs
26 American Insurance Association

1 P R O C E E D I N G S

2 MR. CHAIRMAN: Let us begin by calling
3 the roll. There is a sign-up sheet being passed
4 around, but the Clerk will call the roll.

5 THE CLERK: Representative Eiland?

6 THE CHAIRMAN: Here.

7 THE CLERK: Representative Evans.

8 REPRESENTATIVE EVANS: Here.

9 THE CLERK: Representative Bradford.
10 Representative Waters.

11 REPRESENTATIVE WATERS: Here.

12 THE CLERK: Representative Golick.

13 REPRESENTATIVE GOLICK: Here.

14 THE CLERK: Representative Osmond.

15 REPRESENTATIVE OSMOND: Here.

16 THE CLERK: Representative Bowler.

17 REPRESENTATIVE BOWLER: Here.

18 THE CLERK: Representative Richner.
19 Representative Surface.

20 REPRESENTATIVE SURFACE: Here.

21 THE CLERK: Representative Wald.

22 REPRESENTATIVE WALD: Here.

23 THE CLERK: Senator Redfield.

24 SENATOR REDFIELD: Here.

25 THE CLERK: Senator Burns.

1 SENATOR BURNS: Here.

2 THE CLERK: Senator Breslin.

3 SENATOR BRESLIN: Here.

4 THE CLERK: Assemblywoman Calhoun.

5 ASSEMBLYWOMAN CALHOUN: Present.

6 THE CLERK: Assemblyman Lafayette.

7 ASSEMBLYMAN LAFAYETTE: Here.

8 THE CLERK: Assemblywoman Keenan.

9 ASSEMBLYWOMAN KEENAN: Here.

10 THE CLERK: Representative Keiser.

11 REPRESENTATIVE KEISER: Here.

12 THE CLERK: Senator Bates.

13 Representative Kennedy. Senator Colvin.

14 SENATOR COLVIN: Here.

15 THE CLERK: Representative Montgomery.

16 MR. CHAIRMAN: We talked about this

17 this morning in the Chairman's meeting and the

18 president decided since a lot of people that

19 wanted to be members of various committees and/or

20 had previously been members of various committees

21 and because they didn't sign up in Arizona for

22 whatever reason, were not included on certain

23 committees. If you want to go on a particular

24 committee, including this committee, you simply

25 need to sign up and let the clerk know, like

1 Representative Wald. However, the policy that we
2 adopted is that you will not be able to vote
3 until the next meeting, so for example
4 Representative Wald will become a member of the
5 committee, like he has been in the past, but
6 won't be able to vote at this particular meeting.
7 Is there anybody else that's here that wants to
8 join or sign up? We're trying to make that
9 announcement at every committee meeting so that
10 everybody knows they can be involved in the
11 committee if they want to. What we're going to
12 do today, for those of you, under Section 8 of
13 your notebook is where the proposed model is if
14 you want to turn to that or reference it
15 throughout this testimony. But basically we're
16 going to have three panels today with
17 presentations and after each one we'll have a
18 brief question and answer period and then after
19 it's all over, we'll have another answer period
20 or response. So with that we'll call up the
21 first panel, which is Jack Gillis, executive
22 director of the Certified Auto Parts Association;
23 Eileen Sottile with Keystone; Clarence Ditlow,
24 the executive director for the Center for Auto
25 Safety. Kind of how we started our hearings in

1 our committee in Texas is we ask everybody --
2 most of us up here can read, at least to an
3 eighth grade level, so we hope that you will not
4 have to read to us. Certainly if you want to
5 provide anything to us in writing, some of us
6 will read it, some of us won't, but please tell
7 us everything you know. The first panel.

8 MR. GILLIS: Thank you, Mr. Chairman.

9 I would like the opportunity to submit for the
10 record a complete version of my testimony. I
11 passed in some information earlier to the
12 committee, but since we have received additional
13 information from some of the other folks
14 testifying, I haven't had a chance to respond to
15 that and I'd like permission to do that.

16 MR. CHAIRMAN: Yes.

17 MR. GILLIS: As you indicated, I am
18 the Executive Director of the Certified
19 Automotive Parts Association. I'm also Director
20 of Public Affairs for the Consumer Federation of
21 America. CFA is the nation's largest consumer
22 advocacy organization. I also am the author of
23 *The Car Book*, which is a consumer guide to buying
24 a car, which is published for the last 22
25 years in cooperation for the Center for Auto

1 Safety. Thanks to the courageous, thoughtful,
2 consumer-oriented decision made by this committee
3 at its last meeting, we are very, very close to
4 putting the controversy of aftermarket parts
5 behind us. And I, on behalf of consumers
6 everywhere, appreciate your foresight and your
7 willingness to make a decision to move forward to
8 protect consumers from both car company part
9 monopolies and protect consumers from poor
10 quality parts. The committee did ask me some
11 questions since the last meeting. I'd like the
12 opportunity to respond to those questions. One
13 of the questions was: How does the Section 6
14 provision that prevents penalizing a person who
15 has leased or financed a vehicle and repaired it
16 with a certified crash part, how can that be
17 enforced? Compliance can be enforced by the State
18 through the lease agreement. This form of
19 compliance is both common and effective. The
20 committee also questioned why Section 5 does not
21 require auto body shops and insurers to specify
22 in their documentation whether a certified
23 aftermarket or a car company crash part has been
24 used. Certified parts are deemed to be of like
25 kind and quality, functionally equivalent or

1 equal or better than car company parts. That
2 being the case, there should be no need to
3 identify one over the other, for to do so
4 suggests that they're not equivalent. That's why
5 the draft that you had before you had no such
6 provision. In November Representative Eiland
7 asked me this question and at that time I
8 explained that I have no objections to including
9 such a provision, but I feel it is not necessary.
10 What is important is that if the origin of the
11 parts needs to be identified, then the origin of
12 all of the parts on the estimate should be
13 identified, not just the subsection of crash
14 parts. If it is important to tell consumers which
15 of the cosmetic replacement fenders, or who makes
16 one of the cosmetic replacement fenders, then it
17 is far, far more important to tell consumers who
18 made the brake pads, who made the steering
19 mechanism, who made the air bag detonation
20 system, and yet when we proposed such a broad-
21 based form of disclosure, repairers, car
22 companies and all object vociferously. When you
23 narrow down disclosure to a certain subsection of
24 parts, by their nature you are discriminating
25 against those parts. Put yourself in the shoes

1 of the consumer. You see a repair estimate. You
2 see maybe 20 or 30 parts listed on that
3 estimate, but three or four of those parts you're
4 put on notice saying, in some cases almost like a
5 warning, watch out. These parts may not be made
6 by the company that originally made your car.
7 Well, that's a discriminatory warning. That is
8 not an effort at full disclosure. As a consumer
9 advocate, I can assure you that I'm all for full
10 disclosure. So if we're going to disclose,
11 disclose them all. As I indicated, the goal of
12 the model act is very simple and straightforward.
13 I wanted to address another issue that was of
14 concern to this committee. It's no secret that
15 CAPA developed this original model bill for this
16 committee to consider, but the intent is not and
17 never has been to create a monopoly for CAPA. We
18 are an independent, non-profit, third party
19 standard-setting organization. If we certify one
20 part, that's fine. If we certify 10 million
21 parts, that's fine. We do not benefit or are not
22 present in the marketing or sale of parts. We
23 simply establish the standards for the quality
24 and insure those standards are complied with.
25 While it is true that we are the only such

1 organization, the model act is structured so that
2 other entities can participate, once they've
3 proven their legitimacy to the State. Section
4 3(d) of the Act outlines the requirements for
5 independent third-party certifiers. Another
6 issue that the committee brought up is what is
7 the difference between a repair that the insurer
8 is paying for versus the consumer? As a consumer
9 advocate I think all of us have the right to
10 access to high quality parts, whether or not a
11 big insurance company is paying for that repair.
12 And, in fact, it may even be more important for a
13 healthy, fluid certified parts market to exist,
14 which this model act would facilitate, for
15 consumers who don't have the benefits of
16 insurance-backed guarantees and repair-backed
17 guarantees that are associated with insurance
18 company repairs. So we think that all parts
19 should either come from the car company or be
20 certified as functionally equivalent, like kind
21 and quality, equal or better than the car company
22 parts. I'd like to comment very briefly on some
23 of the recent challenges to what I call
24 aftermarket parts or form and we talked about
25 aftermarket parts or form at the last meeting.

1 You are the focal point in the country today to
2 reform an industry that has for too long been
3 mired in accusations, poor quality, and a
4 monopoly. You are in position to reform this
5 entire industry by taking the first step to
6 improve or to endorse this model bill. The
7 American Insurance Association (AIA) has proposed an
8 amendment to this model act, and I know that
9 Clarence is going to speak about this in a little
10 bit more detail. Essentially the amendment would
11 substitute insurance or guarantees from the
12 insurance companies for the unambiguous quality
13 certification of a third-party independent
14 certifier. Unfortunately this amendment
15 completely reverses what you're trying to do. In
16 effect this amendment would give insurers the
17 opportunity to simply use any part they wanted to
18 and all they need to do is offer some sort of
19 guarantee. We think it's a step backward.

20 We do not think it's good for consumers. We
21 say champion reform, oppose this amendment and
22 support the model act as proposed that you
23 supported the last time. A few days ago, like
24 you, we received a set of documents from General
25 Motors claiming that CAPA parts are inferior to

1 theirs. Unfortunately we have not been able to
2 fully review the report. We do, however, plan a
3 complete response, which we will share with you.
4 In the meantime it is very important not to lose
5 sight of GM's intentions. Essentially they are
6 claiming that they are the sole arbitrators of
7 quality. That because a product is made by GM,
8 if, in fact, it is made by GM, then it must be of
9 high quality. Despite the millions of GM cars
10 recalled and the hundreds of thousands of
11 complaints filed by consumers against GM about
12 their cars, the fact that for years they have
13 lost market share due to poor quality. The fact
14 that of all the products that we are likely to
15 buy, cars generate the most complaints; the fact
16 that poor quality after incessant dealer promises
17 of top quality is a key factor in the poor
18 reputation of car dealers, General Motors is
19 expecting to convince this body that they alone
20 can produce parts. I, for one, do not think that
21 you are that naive and I am embarrassed to think
22 that GM does. As a side note, when we asked
23 General Motors for background information on the
24 documents that they gave you last meeting, we
25 received a note from them saying that

1 information, for example, on the CAPA seal was
2 mysteriously not available. That they didn't
3 make records of the information that appears on
4 the part that they were testing. Suddenly
5 they've come up with some new tests, after we
6 asked them for the documentation on their old
7 tests. So we'll have to see when we take -- when
8 we have the opportunity to take a look at those
9 new tests, what it's all about.

10 MR. CHAIRMAN: Are you talking about
11 this blue binder that ---

12 MR. GILLIS: That's the new test that
13 they've come up with, yes.

14 MR. CHAIRMAN: February 20th?

15 MR. GILLIS: Yes.

16 MR. CHAIRMAN: And this is what you
17 haven't had a chance to review?

18 MR. GILLIS: Correct.

19 MR. CHAIRMAN: But you will.

20 MR. GILLIS: We will and we will
21 submit to you detailed findings. However, we are
22 in the process of completing a study ourselves of
23 hundreds of car company parts, not just the 10
24 that GM did, but we're going to be releasing to
25 the public shortly our results and our initial

1 findings show that over 50 percent of the car
2 company parts that we have tested, and we will be
3 providing complete documentation to this, didn't
4 fit on the cars or meet CAPA standards. We
5 witnessed this very same level of failure for GM
6 parts in particular. On the other hand five of
7 the last eight CAPA parts tested in blind test
8 studies conducted by the Collision Industry
9 Conference were judged as better or equal to
10 their car company counterparts. In fact, one of
11 the major changes that CAPA made in 1999 was to
12 require a vehicle test kit. Why do we go to this
13 expense? Because it was the only way to overcome
14 the major inconsistencies in quality, fit and
15 finish of car company parts. Quite frankly it
16 appears that just being equal to car company
17 parts may, in fact, be a disservice to consumers
18 and repairers. The bottom line is that car
19 company service parts cannot be used as the final
20 word in quality. Another example of the absurd
21 level that GM is trying to take on this issue is
22 exemplified by a letter GM has sent out from
23 their program manager of collision parts to us.
24 This letter was in response to our report on car
25 company hood failures and it stated, and I quote,

1 "We have researched our internal information,
2 along with the NHTSA and Center PRADA safety Web
3 sites to find the detail for this statement."
4 The statement was referring to our documentation
5 of OEM hood failure. "For that time frame we
6 found 17 NHTSA campaign notices in which the hood
7 is referenced. In all but one of those notices
8 the hood itself was not the subject of the
9 recall. In no case had a General Motors hood been
10 recalled," they say. "Instead it was a mechanical
11 component, such as a hood latch or a hinge that
12 was actually being recalled." Does this imply
13 that GM doesn't have serious quality problems
14 when they go to this level of picayune detail?
15 The fact of the matter is NHTSA has issued these
16 hood recalls and, yes, they may not have applied
17 exactly to the GM hood, but I think a hinge or
18 latching mechanism is probably a lot more
19 important than the hood. I request that you
20 listen carefully to GM's testimony. Furthermore,
21 if the car companies experience on the recall of
22 tens of thousands of vehicle parts each year is
23 true, which it is and that is documented by the
24 Department of Transportation, how can their parts
25 be held up as the standard by which all others

1 must be measured? If car company vehicles are
2 manufactured with serious and even dangerously
3 flawed parts, how can this committee be expected
4 to consider car company crash parts as the final
5 work in quality? Given the well-documented
6 history of poor quality, this committee may want
7 to suggest that car companies be required to
8 certify the quality of their aftermarket
9 certified parts as being the same or better than
10 the parts that they originally put on the cars.
11 We urge this committee to see past this attempt
12 by General Motors to change the focus of these
13 discussions. We will provide the public with a
14 complete response and as always we will continue
15 to insure that any parts that do not meet the
16 CAPA standards are removed from the program, but
17 that is and should not be the focus of these
18 discussions today. The focus should be to
19 support this model act in order to protect
20 consumers from a car company parts monopoly. GM
21 should be ashamed of itself with its record of
22 poor quality to come here with a test of 10
23 parts and somehow think this committee will
24 essentially continue to grant it a monopoly
25 position in the crash parts market. CAPA has and

1 continues to improve the quality of independently
2 produced parts.

3 In addition, the presence of high quality,
4 fairly priced CAPA parts is a major positive
5 influence in the quality of car company parts.
6 This Act will open up the market and increase the
7 demand for quality, actually forcing the car
8 manufacturers to meet the same high quality
9 standards that CAPA parts must meet. In closure,
10 I would just like to say on a personal note that
11 I've been a consumer advocate for over 20
12 years and I've been in a lot of battles and I've
13 hopefully been responsible in some small part for
14 a lot of change, especially in the automobile
15 industry. I don't think, in my experience, I
16 have ever seen the opportunity that is being
17 presented to you today to truly step up and
18 protect consumers. You're going to hear from a
19 lot of corporations today. You're going to hear
20 from insurance companies. You're going to hear
21 from the car companies, and yes, these are your
22 constituents, but I'm going to ask you today to
23 think about your other constituents. Think about
24 the folks that aren't here. Think about the
25 folks that are being forced to pay \$400 for a GM

1 hood. That are being forced to pay \$1400 for a
2 Ford quarter panel and that those costs are just
3 simply being rolled into their insurance
4 premiums. Those are the people that we need to
5 think about today and you have the opportunity to
6 continue the effort that you made at the last
7 meeting and support this model bill and open --
8 truly open -- the market to competition. Thank
9 you very much.

10 MR. CHAIRMAN: State your name for the
11 record.

12 MS. SOTTILE: Eileen Sottile with
13 Keystone Automotive Industries and the ABPA, the
14 Automotive Body Parts Association.

15 MR. CHAIRMAN: You've given us your
16 statement?

17 MS. SOTTILE: Yes, correct. Good
18 afternoon, I want to thank you for this
19 opportunity to address you on this important
20 issue. I represent Keystone Automotive
21 Industries, the largest distributor of
22 aftermarket crash parts in the country. We've
23 been in business since 1927. We have over 3,000
24 employees and 142 locations around the country in
25 various states. I also sit before you

1 representing the ABPA, the Automotive Body Parts
2 Association. That's our National Association for
3 crash parts distributors and manufacturers and
4 some other industry related groups. In all about
5 210 separate members in our organization. We
6 probably have the most at stake in terms of in
7 the implementation of this model and as you know
8 we've struggled a little bit in figuring out what
9 to do or what our position should be on this. We
10 utilize clients, Keystone buys and sells as many
11 types of parts as are available. We are big
12 believers in components and participators in the
13 CAPA program and we believe it's the right thing.
14 That the right thing to do is to support this
15 legislation. It's been a bit of a journey for
16 us, but it may cause us at some point to revamp
17 the way that we buy parts, distribute parts,
18 inventory parts and maybe at some point require
19 that some parts on the shelves in our warehouses
20 might not be sold, and I would hope that if this
21 were implemented in the states there would be a
22 phase-in period, where the parts that aren't
23 certified could be sold, and actually want to mention
24 that point for a second. There are good parts
25 that are available that there aren't standards

1 for.

2 They aren't affected by this bill. Parts
3 like lights, glass do not have CAPA standards, or
4 decertification standards, they are DOT
5 standards, but they would not fall under this
6 bill. But we believe that CAPA has helped to
7 improve the quality of parts across the board and
8 that their program is a good thing. There are
9 some new members of this committee and for the
10 benefit of some of you I will just take a second
11 to give you an overview of what our industry is.
12 The crash parts industry is \$12 million dollars.
13 The car companies control 79 percent of that.
14 The aftermarket crash parts companies have
15 15 percent and salvage would be five. We're
16 talking about quarter panels, fenders, bumper
17 covers, anything that's the exterior of the
18 vehicle, crash parts. Those parts are not
19 considered to be safety related. The part that
20 we would consider to be safety related would be
21 the hood. And repeatedly in crash tests by the
22 Insurance Industry for Highway Safety and the
23 Thatcham Institute the hood performed exactly the
24 same as the car company hood. So what we are is
25 actually a generic version, in many cases, of

1 what the car companies are producing and
2 distributing. And then in many cases our
3 parts -- we are buying our parts from some of the
4 same manufacturers, who are actually producing
5 parts for the car companies. We believe that
6 part of what has brought us here today and some
7 of the battles that we've seen in the states, we
8 believe part of the problem is actually
9 perception of who we are and what we are, because
10 we don't actually face the public.

11 We're wholesalers. We're distributors. We
12 have warehouse people, we have salespeople on
13 telephones, we have drivers for body shops and
14 collision repair centers. And the collision
15 repair centers are, in fact, our customers, so we
16 don't necessarily see the end receiver. We're
17 very proud of what we do. We believe our parts
18 are very good quality and at Keystone, in fact,
19 we've printed our brand name, based in part
20 of the CAPA program, called Platinum Plus. In
21 most cases anything that the car companies have
22 offered on their crash parts. We offer limited
23 lifetime warranties and with our Platinum Plus
24 plan actually if we sell a part that's a Platinum
25 Plus part and that part happens to be defective,

1 and our return percentage would be right about
2 2.5 percent, but if that part happens to be
3 defective, we would take it back; we would work
4 with the shop and they would honor any promise on
5 trying to work with that part, and then we would
6 also reimburse the customer for rental car costs
7 if we delayed the repair process. So we are a
8 highly responsible industry and are very proud of
9 the consumer benefit we have. The parts that we
10 sell are anywhere from 20 to 60 percent
11 less than the corresponding car company part.
12 And we believe that you need to use some mix of
13 aftermarket parts in repairing the vehicle in
14 order to prevent a total. The Alliance of
15 American Insurers did a study recently and I
16 think it was a 1999 Toyota Camry is \$23,000 and
17 it was \$101,000 to rebuild part by part with
18 original parts. If you can only use the
19 designated car company parts, you're going to hit
20 that threshold for a total much faster. At the
21 last meeting in Arizona, as you may recall,
22 General Motors distributed some information,
23 something they recommended is that you consider
24 consent. A consent provision that consumers sign
25 off on our parts at the time of the transaction

1 with the body shop. We are completely opposed to
2 that. Not only would it create an unlevel playing
3 field, it would give our companies a black eye.
4 Written consent at the time of repair in the shop
5 would scare customers away from using our parts
6 and we suggest that that, in and of itself, would
7 suggest our parts are inferior. You have to
8 consent to a surgical procedure. You shouldn't
9 have to consent for a bumper cover from the
10 aftermarket from Keystone. So we would
11 wholeheartedly oppose that and we don't believe
12 that would -- we don't believe that would benefit
13 consumers either, because consumers would then,
14 given no incentive to choose the less expensive
15 aftermarket part because a third party is paying
16 for it, they would automatically choose a car
17 company part. We wouldn't stand a chance in that
18 scenario, in the scenario that General Motors
19 suggested at our last meeting, so we would oppose
20 that.

21 We don't feel that that is necessary. In
22 terms of quality, as another statement was made
23 by General Motors in their packets regarding the
24 fact that their service parts always equal the
25 production parts, and our position is that we

1 believe the car companies have an aftermarket
2 also, and that's the service parts division. We
3 also believe that they should be subject to the
4 same standards for certification that we are,
5 because we're buying from a lot of the same
6 people. One of their statements to you in their
7 packet was that their parts -- their service
8 parts equal the assembly parts and in the
9 collision industry conference, one group, which
10 is a group of repairers, collision specialists,
11 who actually will place, in comparative parts, a
12 hood from each of us, from the car companies and
13 a hood from the aftermarket and give it a score
14 in terms of acceptability. At times they found
15 that the aftermarket part, the generic part,
16 actually fits better than the car company part.
17 So in considering the car companies to be a bench-
18 mark for quality, and that may not actually be
19 the case. General Motors also mentioned that 22
20 percent of the time the repairs come back to
21 the shop for -- or parts are being returned to us
22 and I told you that our return percentage is, in
23 fact, 2.5 percent. Let me just check my notes to
24 make sure I got their quote correct. "Collision
25 shops reordering non-OEM parts with a 22

1 percent frequency due to poor fit." Twenty-two
2 percent. That would be impossible for us to
3 survive. If we had to pick up 22 percent
4 of the parts that we actually brought out to a
5 shop. We work on low margin and we work on
6 volume and if we got it wrong 22 percent
7 of the time, I don't think Keystone would have
8 been in business since 1947. They further
9 contended that new non-OEM parts, aftermarket
10 parts were replaced with new OEM parts 59
11 percent of the time, despite the insurer's
12 direction to the contrary, due to fit, quality and
13 customer request. And again we're not seeing
14 that in the numbers that we look at internally
15 and industry-wide. I mentioned that our
16 warranties are better, the quality is not an
17 issue, safety is not an issue. The Insurance
18 Institute, Thatcham Institute tested the hoods
19 and we feel that this is a good proposal, but we
20 do believe that consumers benefit from the
21 aftermarket being healthy and functioning and for
22 us being able to bring parts to the market and if
23 something restrictive would pass in the states,
24 that would be difficult for us. So the fact that
25 we're actually in the marketplace helps to keep

1 the prices of car company parts down, because
2 there's competition and consumers benefit. I
3 brought a little example. When I first started
4 this speech I told you part of the problem was
5 perception of what the aftermarket is. And the
6 car companies have consistently thrown a lot of
7 propaganda out there and advertisements in some of
8 the body shops or in *Collision Repair News* and
9 other -- in other venues, the Collision Repair
10 Center and was trying to scare our customers away
11 from using our parts. And this, in fact, is
12 something that was said to me when I leased my
13 Nissan and what it says is, "Did you know after a
14 collision your Nissan may be repaired with
15 inferior parts?" And it goes on to tell you to
16 make sure when you have an accident that you
17 request genuine Nissan parts and you're supposed
18 to keep this in your glove compartment and on the
19 back it has all the information you fill in
20 regarding the accident and all the information
21 you might report to the police. Then Nissan has
22 another ad that says how to install a genuine
23 Nissan in your consumer's home. And this is
24 published in a magazine that was going to the
25 collision industry and it actually coaches the

1 customers on how to steer the customer -- coaches
2 the body shops on how to steer the customer to
3 the point that they're complaining to their
4 insurance company demanding genuine parts. And
5 it says, "By this time your customer will be
6 surprised to learn that this product is inferior.
7 Urge them to call their insurance company and
8 demand genuine Nissan parts. Point them to our
9 Web site and just sit back, relax and let someone
10 else do the dirty work for a change." And the
11 other ad that I have is from General Motors and
12 it says, "Warning, vehicles repaired with
13 imitation parts can make customers disappear."
14 So we believe a big part of what's brought us
15 here today is some of the perceptions created by
16 our competition, the car companies, and this is
17 just a small example of it. I have submitted my
18 formal testimony to you and I appreciate the
19 opportunity to speak to you and look forward to
20 your questions. Thank you.

21 MR. CHAIRMAN: Thank you. Please
22 state your name for the record.

23 MR. DITLOW: I'm Clarence Ditlow,
24 executive director of the Center for Auto Safety
25 in Washington. Thank you, Mr. Chairman, and

1 members of the committee for the opportunity to
2 talk here today. I always say that the job of a
3 consumer advocate, which is what the Center for
4 Auto Safety is, is a job for a marathon runner,
5 not for a dash runner. In 1970 we began work on
6 getting air bags in cars and we finished getting
7 air bags in all cars by 1994. In 1974, we began
8 work on getting lemon laws in every state and we
9 didn't accomplish that until 1992. We were a
10 little faster there. But one of our very first
11 projects was working on breaking up the monopoly
12 that automobile companies have on crash parts and
13 we began work on that in 1970 also, and yet here
14 I am today in 2002, so I'm going to tell you this
15 has been a long trek and I see the model
16 *Certified Aftermarket Crash Parts* bill as being perhaps
17 the light at the end of the tunnel.

18 The race may be coming to an end, because if
19 we get this model bill passed and it begins to be
20 adopted throughout the states, then we will, in
21 fact, have competition for crash parts in the
22 automobile industry. Now, taking a look at the
23 history of this, in the '60's and '70's the
24 Federal Trade Commission examined the monopoly
25 that the automobile companies had on crash parts

1 and found that it was costing consumers literally
2 billions of dollars in today's dollars, and the
3 Federal Trade Commission came up with a number of
4 recommendations and actually signed a consent
5 agreement with General Motors, where General
6 Motors agreed to distribute crash parts through
7 their dealers at wholesale prices, but they
8 examined the economics of that solution in the
9 mid-1970's and then testified before Congress
10 that it just didn't work, in fact it did more
11 harm than good, because General Motors simply
12 raised the prices of the crash parts at the
13 retail level to cover the wholesale prices that
14 they were giving through their dealers to
15 independent shops. But beginning in the
16 mid-1970's, what we began to see was finally a
17 crack that led to where we are today in the
18 monopoly that automobile companies had. Up until
19 about 1975 every fender on every model on every
20 car was changed every year.

21 They call it the annual style change. We
22 began to have competition from some of the
23 foreign companies, like Volkswagen with the
24 beetle, that funny little car that didn't change
25 its fender every year. So the automobile

1 industry began to drop the annual style change.
2 In fact, the October introduction of the new
3 models every year, in which they used to bring
4 cars on truckloads covered with canvas into every
5 small town in America, the hoopla of the new
6 model and what it looked like, it's gone. Now we
7 have new models being introduced in January. I
8 mean a friend of mine just bought a 2003 car in
9 January of this year and it's only 2002. But
10 what did happen was fenders no longer changed, so
11 it became effective for competitors to invest in
12 tools and dye because they could count on the
13 fender on the Taurus not only being the same for
14 several years, but also being substitutable for
15 the fender on a Mercury Sable, so we had the
16 introduction. And we are where we are today, as
17 Eileen indicated, we're about 15 percent of
18 the crash parts sold in this country are
19 aftermarket parts. Now, as a consumer
20 organization, what the Center for Auto Safety
21 said and did was it's great to have competition,
22 because that's going to lower prices, but how do
23 we get quality? And the answer to getting
24 quality is certification. So in the mid-1980's,
25 the Center for Auto Safety joined hands with the

1 insurance industry, who, by the way, we're not
2 always on the same side of the insurance
3 companies, in fact, we often oppose them, and
4 with the automotive repair industry and some of
5 the shops and we helped set up the Certified Automotive
6 Parts Association and it's the only organization
7 of its kind today and we would like to see
8 competition for CAPA just like there is
9 competition for the auto companies. And what
10 this bill would do is it would set up a market,
11 so that you can have different certifiers of auto
12 parts in the marketplace competing with CAPA.
13 If CAPA wins, fine. If someone else wins, fine.
14 But the bottom line is the way to get quality of
15 the parts is to do certification of those parts.
16 And if you take a look at the model bill we do,
17 in fact, think it's a wonderful model act. We,
18 however, are very concerned about the proposal of
19 the AIA to provide a guarantee or certification.
20 Because what will happen is if the proposed
21 amendment of AIA to have the guarantee offered by
22 the insurance company, that they guarantee
23 replacement parts, well then you've gotten away
24 from what we are proposing -- have adopted with
25 CAPA, which is a chrontifiable objective test

1 method. We would have a substantive guarantee,
2 which doesn't set any standard for the part.
3 Doesn't set any recall mechanism, any complaint
4 mechanism, it would simply be hit or miss and we
5 go back to the good old days or, as I say, the
6 bad old days of crash parts in the marketplace
7 that may very well be cheaper, but the quality
8 will not be there. What we need in this country
9 is competition and the way to get competition is
10 to have the manufacturers and the distributors,
11 like Keystone, supply competitive crash parts.
12 But to hold those crash parts subject to a
13 standard, which is set by a certifying
14 organization, which has no interest in the profit
15 or sales of the parts. If this bill were to be
16 adopted as it was proposed, it would be a major
17 step forward for consumers in this country.

18 It would insure that the hard work of the
19 Center for Auto Safety over the last 30
20 years, that we could draw a close to that forum,
21 because I feel sure that the ultimate outcome
22 would be quality parts at competitive prices, and
23 we have a 12 million dollar monopoly in this
24 country. We're seeing today about 800
25 million dollars per year through just 15

1 percent of the crash parts that are out there.
2 And of those 15 percent, only a small
3 fraction of those, as Jack Dawes could tell you,
4 are actually certificated parts. So we still
5 don't know the quality of many of the crash parts
6 that are being sold, but as a consumer
7 organization we'd like to see a certified label
8 on every non-OEM part that's sold, and, frankly
9 we'd like to see the OEM, the original equipment
10 manufacturer parts that are sold by General
11 Motors to go through a certification process,
12 too. Toyota, Honda, Ford, all of them should be
13 held to the same standard. Now, we recognize the
14 bill doesn't provide for that, but as a first
15 step let's certify the non-OEM parts to certify
16 that the part that goes to your car and my car
17 is a quality part and speaking as an individual,
18 who has a little Chevrolet Prism, which General
19 Motors often talks about and has been described
20 by Chevrolet as well. My father was a service
21 manager for a Chevrolet dealership in the 1950's
22 and '60's and I kind of held the loyalty. But
23 for some reason my little car is -- gets bumped
24 every now and then by trucks and the fascia on
25 the bumper, which is not certified by CAPA, when

1 I look at my repair bill, it's a genuine
2 Chevrolet part, \$300 for a part that weighs no
3 more than five pounds. I mean it's just a piece
4 of plastic. There's no reason why a part like
5 that should cost \$300 and we'd like to see
6 certified aftermarket parts come into place for
7 it, because the thing that will happen is as soon
8 as you have competition the price goes down and
9 the consumer is saved. And what we're talking
10 about here, finally, is just savings in terms of
11 savings in your insurance premium, savings on
12 your deductible and not every claim is covered by
13 the insurance company, so if you have to go out
14 and pay for it yourself, you can get a savings on
15 this aftermarket part, but without this bill you
16 won't have the guarantee that that part is, in
17 fact, a quality part, and we need this bill to
18 insure standards for parts. Thank you.

19 MR. CHAIRMAN: Thank you. Now we'll
20 open it up for questions for either one
21 individual or for them as a group. Does anybody
22 have some questions?

23 REPRESENTATIVE MELIO: I just have one
24 question.

25 MR. CHAIRMAN: Yes, sir.

1 REPRESENTATIVE MELIO: You mentioned
2 about a response and you say it will come later.
3 How much later?

4 MR. GILLIS: We hope to have our
5 response to the General Motors -- we have two
6 documents that we want to share with you.
7 Specific response to the claims in the General
8 Motors document that you all have been presented
9 and then the release of a study of over 1,200 car
10 company parts, not just the 10, like General
11 Motors selected, but 1,200 car company parts as
12 to the quality of those parts. I'd like to say
13 two to four weeks.

14 REPRESENTATIVE MELIO: How do we know
15 these parts are equal?

16 MR. GILLIS: Well, the CAPA
17 certification program is an incredibly detailed
18 and exhaustive program, which evaluates the
19 quality of the factory and each and every single
20 part. Not only does the part have to go through
21 a vehicle test bit to insure that it fits on a
22 car properly, but all of the materials in that
23 part are tested. All the welds are tested.

24 The tensile strength of the material is
25 tested. If it's a plastic part, it goes through

1 a whole series of plastic tests to insure that
2 the properties of the plastic used in the generic
3 part are the same performance characteristics as
4 the plastics used by the car companies. You and
5 I can't look at a part and make an informed
6 judgment as to whether or not, 1) there's enough
7 welds; it's the right material; it's going to be
8 corrosion free, so that's why we have to put them
9 through all these tests before they get our seal
10 of approval.

11 REPRESENTATIVE MELIO: Who does the
12 certification?

13 MR. GILLIS: CAPA is set up as an
14 independent, third-party standard setting
15 organization. That means we develop a set of
16 standards, subject those standards to public
17 scrutiny. We know the car companies have gone
18 over the standards with a fine tooth comb. They
19 are publicly available to anyone and then we have
20 an independent validator at an independent
21 testing lab, which validates that the
22 manufacturer is complying with those
23 requirements, so it's a pretty detailed step.
24 And that's one of the reasons why only three
25 percent of the parts in the marketplace today

1 meet our standards, because it's pretty rigorous.
2 Now, with a model bill like this, there would be
3 no choice. It's like the outlets in this room.
4 Nobody is running around trying to sell outlets
5 that are uncertified, that don't meant the
6 building codes of Charleston. And that's because
7 there is a minimum requirement in the
8 marketplace. Now, there may be some really good
9 outlets and there may be some that aren't so
10 good, but they all meet a minimum standard.
11 That's the beauty of the CAPA model bill.
12 Everything would have to meet this minimum
13 standard.

14 REPRESENTATIVE MELIO: Are these parts
15 put through a collision test?

16 MR. GILLIS: Eileen mentioned that the
17 only part that has significant safety
18 ramifications and both Clarence and I have spent
19 about 20 years as auto safety advocates, is
20 the hood. Now, the hood isn't the safety related
21 part. The hood does have to comply with a
22 federal motor vehicle safety standard that says
23 in a frontal 30-mile-an-hour collision, no
24 part of the front of the car can come into a
25 three-inch zone in front of the windshield. So

1 therefore what the car companies do is they build
2 certain strength into the latching mechanism and
3 they put buckle points into the hood. The beauty
4 of the CAPA program is that we insure that that
5 same tensile strength, hardness, steel, weld
6 strength of the latching mechanism is there and
7 that the buckle points are there, and when these
8 parts are tested side by side, they perform the
9 same.

10 REPRESENTATIVE MELIO: Can you
11 determine that without a collision test?

12 MR. GILLIS: Well, you should do --
13 that's why collision tests have been done, yeah.
14 You should do a baseline collision test to
15 determine whether -- in other words, there is a
16 fundamental scientific logic that if the part is
17 manufactured exactly the same as another part,
18 they're going to perform the same way. That's a
19 pretty standard, accepted technological review of
20 comparative products. However, it's good to test
21 that, which is why the Insurance Institute for
22 Highway Safety went ahead and tested it. Let me
23 say one other point that's even more significant.
24 As a consumer advocate, I always go to whose
25 pocketbook is going to be affected. If these

1 parts were somehow unsafe, who would be paying
2 the price for them? The insurance company.

3 They would be paying the price in terms of
4 increased personal injury, increased problems
5 with injury to people. So they have no financial
6 incentive to use an unsafe part.

7 MR. CHAIRMAN: Jack, speak into the
8 mic.

9 MR. GILLIS: Okay. Sorry.

10 REPRESENTATIVE MELIO: My concern is
11 not so much the price as it is the quality. I
12 would rather pay more for something quality than
13 the reverse.

14 MR. GILLIS: Couldn't agree with you
15 more.

16 REPRESENTATIVE MELIO: Mr. Ditlow, you
17 mentioned about the bumper. Isn't that important
18 also?

19 MR. DITLOW: I'm sorry, is this the
20 same ---

21 REPRESENTATIVE MELIO: The bumper you
22 said was only like so many pounds and ---

23 MR. DITLOW: Right. It's the plastic
24 bumper cover that weighs less than 10 pounds.
25 You can pick one up with one hand and it's

1 just -- it's the thing that gives it the cosmetic
2 look on the front of it and yet it costs \$300 to
3 replace and there just simply was no competition
4 when the bumper on my Prism was damaged by a
5 truck.

6 REPRESENTATIVE MELIO: Thank you.

7 MR. CHAIRMAN: Tony, would you say
8 your name for the record.

9 REPRESENTATIVE MELIO: Tony Melio,
10 Pennsylvania.

11 MR. CHAIRMAN: Representative Waters
12 has a question.

13 REPRESENTATIVE WATERS: Leslie Waters,
14 Florida. Thank you very much for all three of
15 your presentations. Very informative.
16 Mr. Gillis, a question.

17 You mentioned parts that GM make, if, in
18 fact, they make them. Would you be more specific
19 on what you were implying?

20 MR. GILLIS: Sure. I think one of the
21 things that I was concerned about among other
22 things, of General Motors' testimony the last
23 time they came before this body was in response
24 to a question that was asked by one of you, they
25 indicated that they make all of their own parts.

1 Well, the fact of the matter is General Motors,
2 like all car companies, does subcontract the
3 manufacturing of a wide variety of parts to other
4 companies. In some cases those companies are
5 probably the same companies that are making the
6 aftermarket parts. This is a common experience
7 in Europe. It is a growing experience here as
8 the car companies start to divest themselves of
9 their parts operations. But it is not at all
10 uncommon for a manufacturer to make parts for
11 both the car companies and non-car company use.

12 REPRESENTATIVE KISER: George Kiser
13 from North Dakota. You have discussed the fact,
14 and it is well documented that the price of the
15 part is generally less. For certified parts is
16 the installation cost similar, because that's
17 ultimately involved in the cost.

18 MR. GILLIS: One of the complaints
19 that repairers have about the use of aftermarket
20 parts is that while they may be cheaper, they
21 cause a lot more time, effort and labor because
22 they don't fit well. It is our intention and we
23 believe we are extraordinarily successful at this,
24 that if the part is of the same dimensional
25 characteristics as the car company part, than it

1 shouldn't cause any more labor. And at CAPA our
2 belief is if these parts don't work for collision
3 repairs, then we simply haven't done our job.
4 And that's the beauty of the model bill. It
5 holds a public, non-profit entity responsible for
6 the quality of the parts. And that's our
7 obligation to the public. Is every single CAPA-
8 certified part perfect? Absolutely not, but at
9 least we've built in a set of standards and a set
10 of checks and balances, so that we dramatically
11 improve the quality of the parts, so not only
12 does the consumer get the part with the right
13 material, but the repairer gets a part that they
14 don't have to fool around with. One of the
15 things that we've heard anecdotally and we'd like
16 to be able to try to document this, is that when
17 a repairer gets a bad aftermarket part and it
18 doesn't fit, they'll get all frustrated, throw it
19 in the corner and get angry. Then they'll put
20 the car company part on. They'll find that that
21 part doesn't fit either. And then they scratch
22 their head and they say, "Gee, I don't have any
23 other choices here. I guess I better make the
24 car fit this part," because this is the part of
25 last resort. We have now discovered, and it's no

1 surprise, that in over 50 percent of the cases
2 of the over 1,200 car company parts that we have
3 examined very carefully, they don't fit. Now,
4 originally one of the biggest problems with CAPA,
5 before we put our vehicle test fit into place,
6 was that we were certifying perfect copies of bad
7 parts. We would get a complaint about a part.
8 We'd go through our whole system. We'd check it
9 on the checking pictures, we'd go around and we'd
10 say, gee, this part matches the car company part
11 perfectly. Well, guess what? The car company
12 part was not good. So we had to revamp our
13 entire system to go back and now the final step
14 is that it must fit on a car that is within the
15 manufacturer's specifications in terms of design
16 and lack of damage.

17 MR. CHAIRMAN: Any questions?

18 REPRESENTATIVE OSMOND: Tim Osmond
19 from Illinois. The gentleman from CAPA just a
20 few seconds ago said something about only three
21 percent of the parts are certified today and do I
22 presume then that 97 percent of them
23 are not?

24 MR. GILLIS: Yes. Let me just amplify
25 the remarks that both Eileen and Clarence have

1 made. Of the total population of parts,
2 approximately 79 or 80 percent are only available
3 from the car companies. About 12 percent are
4 available as generic parts, not certified;
5 another five percent are recycled or used parts
6 and then the remaining three, if that adds up to
7 a 100 or close to a 100, are the
8 certified parts. Now, what is particularly
9 significant about that is that collision
10 repairers four out of five times are using a
11 non-certified over a certified part, which amazes
12 me, given, I'm sure, the complaints that you've
13 all heard that the parts don't fit. But those
14 are pretty much the statistics. Now, let's go
15 back to that 80 percent car-company parts
16 monopoly. That is a huge monopoly. It's one of
17 the biggest secret monopolies in America today.

18 Most of us don't even realize it's there,
19 because our insurance companies are picking up
20 the bill for these -- for most of these repairs.
21 We don't buy parts. We may go out and buy a
22 windshield wiper, an alternator, we might even
23 buy a radiator to have a radiator replaced or
24 we'll buy a battery or we'll buy a muffler
25 system, but we don't go out and buy fenders. So

1 we don't really have an understanding of just how
2 expensive these are.

3 REPRESENTATIVE OSMOND: The other
4 thing, you were making a statement that many of
5 the manufacturers of GM parts also manufacturer
6 the parts for another network. That would lead
7 me to believe that the manufacturer, then, is
8 producing the same product and only private
9 labeling some for GM. Is that your statement
10 then?

11 MR. GILLIS: In some cases that is the
12 case.

13 REPRESENTATIVE OSMOND: Do you have
14 any specific examples of that?

15 MR. GILLIS: Sure. For example we
16 talked about European. Both Bausch and Lucas
17 have specific contracts with European car
18 manufacturers, most of which sell cars here in
19 the US, in which they will contract with that car
20 manufacturer and this is an example. These
21 numbers are probably not exactly right. We will
22 make "X" hundred thousand headlights for this
23 Volkswagen, BMW, Mercedes or whatever, and then
24 we reserve the right to build another sum amount
25 for sale under the Bausch or Lucas name. Now, of

1 course, it can't have Mercedes, Volkswagen, or any
2 of that type of identification. It can't be in
3 the same box. It can't be implied that these are
4 the same parts, but when you take a look at them
5 you will see that they are the same parts. And
6 that's part of the license agreement that the
7 subcontractor makes. We do know of a couple of
8 parts where they are exactly the same part. One
9 will have car company brand on it and the other
10 won't. More likely is the case where the
11 manufacturer may be making certain parts for
12 General Motors, as General Motors branded parts,
13 and then other parts for, say Honda, as aftermarket
14 parts.

15 REPRESENTATIVE OSMOND: Believe me, I
16 don't know much about manufacturing, but aren't
17 these parts made off of some kind of tools and
18 aren't there patents on that? Who normally owns
19 that? It would be my understanding that it would
20 be GMC or one of those people would own those and
21 I'm kind of surprised that they would allow them
22 to use that to make parts for others.

23 MR. GILLIS: That's an excellent
24 question. When the car companies tried to
25 legislate out of business on a state-by-state

1 basis this industry, they failed. So what they
2 did was, I believe in the early '80's, they went
3 to Congress and they tried to get design patent
4 protection on these parts. Congress
5 unquestionably said that's ridiculous. These are
6 functional parts. There needs to be competition
7 in the marketplace. Where would it stop? Would
8 that mean you would have a design patent on a
9 color of paint, on a windshield, on a windshield
10 wiper, on a battery? No, these are functional
11 parts of the car. They are not protected by
12 design patents. And one of the benefits of the
13 CAPA program is, yes, you do have to have a dye in
14 some cases, an injection mold in other cases.
15 One of the benefits of the CAPA program is that
16 those devices have to comply with our inspections
17 and our tests to insure that they are capable of
18 producing a part that's the same as the car
19 company part.

20 REPRESENTATIVE OSMOND: Well, you've
21 done your other tests on the aftermarket part.
22 You tested the original manufacturers as well?

23 MR. GILLIS: Yes.

24 REPRESENTATIVE OSMOND: Do you have
25 studies on that?

1 MR. GILLIS: Absolutely and that's the
2 information that ---

3 REPRESENTATIVE OSMOND: How many of
4 those parts that you studied meet your standards?

5 MR. GILLIS: Well, that was what I was
6 referring to. We estimate that over 50
7 percent of the car company parts that we now have
8 examined through this process don't meet our
9 standards. We've actually had a situation where
10 we've found the General Motors fender where the
11 independent manufacturer wanted to manufacturer
12 this fender and wanted it certified. We could
13 not, after buying nine General Motors fenders for
14 this, we could not find one that we found fit
15 within reasonable tolerances on the vehicle, so
16 we just had to say to the manufacturer, look, you
17 know, you can do what you want with this part,
18 but we can't certify it because we can't find a
19 General Motors part that's good enough, that
20 meets our standards, that would be equal. And
21 that's a limiting factor. This is something that
22 most people in the industry don't understand, and
23 when we release this study it will be very
24 controversial, there will be no question about
25 it, but it's going to be a real eye opener.

1 We're finding more and more repair shops standing
2 up and saying now, you know, you're right. I
3 have a lot of problems with car company parts,
4 too.

5 REPRESENTATIVE OSMOND: One of these,
6 as I think the gentleman across the way was
7 alluding to, was how are we going to know as
8 legislators who a good certifier is and isn't?

9 MR. GILLIS: Excellent question.

10 REPRESENTATIVE OSMOND: What standards
11 are out there? I mean the only outfit that I
12 know of, as a layman, might be Underwriter's Lab
13 in Glenview, Illinois, I might add.

14 MR. GILLIS: Yes. And Underwriter's
15 Lab had a monopoly on that industry for quite
16 some time. Now there is competition to
17 Underwriter's Lab, but that's an excellent
18 question and we believe we built in to the model
19 bill requirements that a state entity would look
20 at to insure that the certifier wasn't simply
21 rubber-stamping poor quality parts. And that's,
22 quite frankly, one of the criticisms that we get.
23 This is a \$5.5 million a year program. We hope
24 to be financially independent of the insurance
25 industry at some time in the future. You all

1 know what our financial status is. We are not.
2 And so am I just a rubber stamp of the insurance
3 industry? Am I just rubber-stamping poor quality
4 parts? Well, to help assure the public that we
5 are not, all of what we do is available to the
6 public. We are in the final stages ourselves of
7 being approved by the American National Standards
8 Institute as an independent certifier. We have
9 had consumer advocates activity involved in the
10 process and just last month we announced that the
11 chairman of the largest collision repair
12 association in the world is going to be come the
13 chairman -- the forearm chairman is going to be
14 come the new chairman of CAPA's board. Again, to
15 do everything we can to assure the public that
16 this is a legitimate entity. But that's a good
17 question and that's why we built those criteria
18 into the model bill, so that you wouldn't just
19 have anyone coming in and saying the parts are
20 okay.

21 REPRESENTATIVE OSMOND: A little bit
22 ago, I think it was Mr. Ditlow that made some
23 comment that because the insurance industry --
24 I'm just going to paraphrase this, is supporting
25 this and after all they have the most to lose if

1 the parts aren't good. Isn't that about what you
2 said? I don't know who said it.

3 MR. GILLIS: Did I say that?

4 REPRESENTATIVE OSMOND: Somebody said
5 it.

6 MS. SOTTILE: You said it.

7 REPRESENTATIVE OSMOND: The problem I
8 have with ---

9 MR. GILLIS: Right, right. That was
10 on the safety issue. If these parts were unsafe,
11 they would have the most to lose.

12 REPRESENTATIVE OSMOND: I don't quite
13 understand that. Then who has the most to gain.
14 Now the consumers have the most to gain, but --
15 I'm new at this, so I'm not seeing a ground swell
16 from other people in support of this and if the
17 insurance companies had the most to lose, then to
18 me it would seem they have the most to gain and
19 that doesn't necessarily equate to consumers
20 gaining. And this could be perceived as being
21 simply a method for the insurance companies to
22 cut their costs without any appreciable premium
23 savings back. And I'm not saying that true, but
24 when the statement was made that they have the
25 most to lose, then I would think that the

1 reverse, they have the most to gain, would also be
2 applicable.

3 MR. GILLIS: Let me make two quick
4 points. One is my statement had to do with the
5 issue of safety. Let's face it, the insurance
6 companies have a way out.

7 They could use all the car company parts.
8 Some of them actually do. They don't really have
9 anything to gain or lose, because if they use all
10 car company parts and they start putting these
11 four, five, six hundred dollar parts on, they
12 just pass that onto the consumer in increased
13 policy.

14 So they don't have anything to lose. The
15 only loser, if we don't have competition, will
16 be the consumer. The only winner will be the car
17 companies.

18 And listen to this, if you don't take the
19 steps to pass this model bill and jump start this
20 competition, the only winner will be the car
21 companies. One, they can charge whatever they
22 want for the parts, and two, they'll charge so
23 much for the parts that they will force the
24 insurance companies to start totaling these cars
25 out and guess what, I have to go buy another one

1 of their vehicles. It's a double whammy. That's
2 what's so vital about jump starting competition.

3 REPRESENTATIVE OSMOND: I don't
4 disagree with you. My question there was just --
5 I don't think that was a good analogy that the
6 insurance companies have the most to lose,
7 therefore they don't have any interest in it.
8 And I think to plead this case, I would not be
9 using that as logic.

10 MR. GILLIS: Well, I appreciate that.

11 REPRESENTATIVE OSMOND: Thank you very
12 much for your answers.

13 MR. CHAIRMAN: Any other questions? I
14 have one. I want short, specific answers.
15 Number 1, Jack, you said that on the model bill
16 that there would -- the prohibition of leased
17 vehicles from prohibiting using non-OEM parts
18 would be enforceable. How would that be
19 enforceable since this is not specifically an
20 insurance issue and contract, how come it
21 wouldn't be pre-empted by Interstate Commerce
22 Laws?

23 MR. GILLIS: I would -- I understand
24 that it would not be and it could be enforced by
25 state statute, but I would like to reserve the

1 right to clarify that, because I'm not an expert
2 in -- I'm not a lawyer and I'm not an expert in
3 that, so I would appreciate the opportunity to
4 get back and answer the committee later.

5 MR. CHAIRMAN: Number 2, why are we
6 only talking about -- this is for anybody. I
7 mean we're not talking about spark plugs, brake
8 pads, mirrors, lights. Do all of those have to
9 undergo any type of certification process?

10 MR. GILLIS: In some cases, if the
11 parts are safety related, they will have to
12 conform with certain motor vehicle safety
13 standards, such as lights. However, the most
14 significant thing is in the 1920's, 1930's, when
15 the car companies had monopolies on those parts
16 as well, competition was encouraged. Competition
17 flourished and that competition now is protecting
18 consumers from the huge disparities in price and
19 quality that we see in the cosmetic parts. And
20 it was primarily because consumers were often
21 making the purchase decision or probably always
22 making the purchase decision, unless it was a
23 warranty-related repair. And when a consumer is
24 faced with a decision to buy \$189 Midas muffler
25 or a \$300 or \$400 Chrysler muffler, have that

1 Midas muffler guaranteed for the life of the car,
2 they're going to choose that. We don't make the
3 decision so often in the crash repair because
4 the repair shop is doing -- is collecting all the
5 parts and putting them together.

6 MR. CHAIRMAN: My question goes to the
7 reason we're dealing with this, at least from my
8 understanding, is that because insurance policies
9 include a provision of like kind and quality,
10 fit, etc. we don't have this issue with -- of
11 certification with mufflers, with lights and so
12 why is it that we are talking about certification
13 with only these particular body parts and have
14 never had an issue with the other replacement
15 parts?

16 MR. GILLIS: I'm not sure I can answer
17 that question, except that there are poor quality
18 body parts out there and you can't look at a body
19 part and make an informed decision.

20 MR. CHAIRMAN: That goes to my next
21 question, mostly to Eileen. If I know -- if a
22 body shop puts on a part bought from Keystone,
23 does it say have Keystone's name on there? Does
24 it have CAPA's name or Yokimoto or Johnson?

25 MS. SOTTILE: It will be delivered in

1 a Keystone box and the manufacturer's name or the
2 CAPA certification --- and/or the certification
3 sticker would be on the part. We do sell
4 non-certified parts, too, so that's why I say it
5 might be the manufacturer. In either case it's
6 the manufacturer and in some cases it's actually,
7 in addition to that, the certification sticker
8 from CAPA.

9 MR. CHAIRMAN: It seems like in any
10 specific examples you use, you use GM in specific
11 examples and then you talk about car companies.
12 And it seemed -- what about Ford, what about
13 Chrysler, what about Kia, Mercedes, BMW?

14 MS. SOTTILE: In terms of?

15 MR. CHAIRMAN: In terms of this whole
16 discussion? Because all the examples y'all have
17 given, that I recall, all involve GM, but is the
18 same thing applicable to Ford and Mercedes?

19 MR. GILLIS: Yes.

20 MS. SOTTILE: Oh, absolutely. You
21 know, we compete with all of them. We provide a
22 quality cost alternative to each of those
23 company's collision parts. And the difference
24 can be significant. Like Toyota, for instance,
25 an available head lamp from Toyota is \$245; from

1 Keystone it's \$95. An Avalon grill is \$155, from
2 Keystone, \$79, so we consider ourselves to be
3 competing with all of them.

4 In one way or the other most of them have
5 been engaged in some legislative issues in the
6 states.

7 MR. CHAIRMAN: Thank you. Any other
8 questions? Thank you very much.

9 Our next panel. Kris Kiser, Vice President
10 of State Affairs, the Alliance of Automobile
11 Manufacturers; Sheila Loftus, Executive Director,
12 Publisher and Editor of the Auto Body Association
13 Magazine; Gene Fondren, president of the Texas
14 Automobile Dealers Association. We have some
15 other people that were on the list as well. We
16 have Pat Maguire from C.J. Maguire Law Firm; Mark
17 Pierson, CIC; Mark Hoyle from the United
18 Autoworkers. Be sure to speak in a microphone
19 and state your name whenever you start and watch
20 your time, please. If we could get order, so we
21 could make sure everybody is in here, I would
22 appreciate it.

23 MS. LOFTUS: My name is Sheila Loftus
24 and thank you for letting me speak today. I
25 publish a magazine called *Hammer and Dolly*. I

1 also represent the Washington Metropolitan Auto
2 Body Association. My very first assignment was
3 in 1976 and it was a crash parts hearing up on
4 Capitol Hill. This is an issue that I've lived
5 with for a very long time and I've been to the
6 factories in Taiwan and I've been to the
7 factories in the United States and I think I'm
8 over-informed about this issue. The important
9 thing I would like to say is that the issue of
10 legitimatizing non-OEM crash parts, certified or
11 not should not be legislated. Giving a
12 legislative stamp of approval on some of the
13 non-OEM parts will no more help the quality than
14 suggesting and voting to make the local college
15 football team a national powerhouse and then,
16 poof, it's in the ball game. So as they say in
17 sports, you have to prove it on the field and in
18 this case the field is the open market and the
19 open market has not been allowed to prevail. Let
20 me explain this. These crash parts, these
21 non-OEM crash parts or generic parts, were first
22 discovered when one of the OEM's fenders used to
23 rust out, so an American went over to Taiwan and
24 said, "Could you make this?" because they
25 couldn't get enough used parts to do the

1 replacement. So this man, I think he was really
2 making refrigerators and he stopped and he said,
3 okay, so he copied the part. Well, that was
4 about in '82 or '79, '82 and then along comes
5 State Farm, an aftermarket parts distributor,
6 and a computerized estimating system called ADP.

7 In 1985 they got together and they figured
8 out, ah-hah, we could force these generic parts
9 on people because they were cheaper.

10 And they tried that and tried that and it
11 still didn't work and so in 1987 State Farm, with
12 the help of Pete Ingram as general counsel, they
13 conceived the idea of CAPA. And it was a good
14 idea, but it did not work and it does not work.
15 CAPA has been insurance-backed. It was insurance
16 started and it continues to be that way and it
17 still only has three percent of the market and
18 it's been there since '87 and now it wants you to
19 legislate so it can have more of the market.
20 Really, if the market could work, then the market
21 would sort out itself, because insurers have been
22 pushing these parts and the way they push them is
23 by having insurance adjusters do the marketing
24 for these parts. Body shops don't have a say as
25 to which of the aftermarket parts is sourced. It

1 just sort of shows up. They don't know the
2 manufacturer and they have no communication with
3 the manufacturer, which by and large are in
4 Taiwan and the Taiwanese, don't blame them, they
5 are only producing cheap parts because that's
6 what was asked of them by the estimating systems.
7 I have to say Jack does do a good job and I agree
8 with him on some things and I agree the amendment
9 isn't good, but I do not agree with him on this.
10 I think certifying these parts will only confuse
11 the consumers even more. I have been to the
12 factories and I would like to address that issue.
13 The parts, OEM and non-OEM made in the same
14 factory. They are made in the same factory, but
15 the Taiwanese do not make OEM parts that are sold
16 in North America. A couple of factories in the
17 United States do make parts, but they're
18 completely different processes, completely
19 different buildings and a different method of
20 producing them and the dyes they use are
21 completely different. You can look at them and
22 see the differences in them. I could go on and
23 on, but also this thing about certifying. It's
24 very confusing here, because now we have a
25 comparative study, and I think I gave you a copy

1 of this. CAPA came out with a report that
2 compared its program to something called
3 Manufacturer's Qualification Validation Program.
4 And this was MQVP, was started by Nationwide,
5 which got fed up with CAPA and abandoned CAPA,
6 even after helping to fund it. And it says that
7 MQVP parts don't meet CAPA standards and then the
8 MQVP spoke back and said, "But CAPA is not a
9 standard, it's just a customized standard," and
10 back and forth. That adds to the confusion.

11 REPRESENTATIVE OSMOND: Who is MQVP?

12 MS. LOFTUS: It's called
13 Manufacturer's Qualification Validation Program
14 and it's Global Validators. It's sort of a --
15 somebody that uses its standards to look at a
16 process in which something was manufactured and
17 they're based in Detroit and you have a copy of
18 that.

19 REPRESENTATIVE OSMOND: I just didn't
20 know who they were.

21 MS. LOFTUS: Nationwide backs them and
22 three insurers, two of which are Nationwide
23 supported. But USAA, on the other hand, will not
24 use MQVP products, it only wants CAPA, and
25 Nationwide, if the part isn't available MQVP or

1 on their list -- some of the parts overlap, don't
2 misunderstand. Then they go to OEM. And
3 incidentally the used parts -- two of the biggest
4 yards that sell used parts destroy aftermarket
5 parts in their inventory if they find them, so
6 they don't even want to sell them. How am I
7 doing for time? Okay. I would like to talk
8 about some of the problems these parts and that
9 hasn't been addressed is called diminution in
10 value and any car that's been in an accident is
11 perceived to be worth less. And so the issue of
12 how an alternative part, certified or not, would
13 affect that is not addressed and I don't feel, as
14 a consumer, that the leased part is addressed
15 properly either. The other thing is that I do
16 think things like the Keystone Platinum Plus
17 program in the marketplace, the collision
18 repairs, I've heard from two that said they had
19 success with those parts and they know who to
20 address directly. Oh, yes, I want to tell you
21 about this CIC test fit thing. Well, it's not a
22 test. It's a demonstration and it's nothing more
23 than people, anybody coming and looking at those
24 parts. So to say it is a test is really a
25 misnomer. Also in the marketplace Keystone

1 settled a lawsuit with Ford in 1992 in which it
2 said it could not say the parts were like OEM and
3 at that point another distributor scored. His
4 name was Eagle and all of a sudden it was selling
5 a whole bunch of parts, because State Farm
6 said -- would not source any Keystone parts on
7 its estimates, none, from May 1992. Well, guess
8 what. There was a lawsuit in 1999 in which State
9 Farm lost and was told it had to pay \$1.2
10 billion, which has sort of been shaved down a
11 little bit, but anyway, then lo and behold, Eagle
12 lost -- kept losing market share and it is now
13 out of business because it was not supported by
14 the insurance industry. I think CAPA is just an
15 excuse to try to sell these parts and tell
16 legislators that the insurance industry is doing
17 everything it can do to keep prices down, but the
18 prices haven't gone down. Oh, I see the red
19 light. One more point. Nationwide charges more
20 on its policy in Maryland if you want OEM parts.
21 It should be the other way around. Thank you.

22 MR. CHAIRMAN: Thank you. Next. Be
23 sure to state your name and who you represent.

24 MR. FONDREN: Thank you Mr. Chairman
25 and members of the Committee. My name is Gene

1 Fondren. I'm the President of the Texas
2 Automobile Dealers Association based in Austin,
3 Texas. I'm here today on behalf of the
4 Automobile Trade Association Executives, which is
5 an organization, of which I'm a member, comprised
6 of 112 automobile and truck dealer associations
7 across the United States, 49 out of the
8 50 states are members. The others are
9 metropolitan and national leader associations
10 involved in this organization.

11 We also have six associations from Canada
12 who are members of ATAE. I'm here on behalf of
13 ATAE because on January the 25th we adopted a
14 resolution in opposition to the model act.

15 That resolution is attached to my written
16 testimony. Mr. Chairman, I would request that
17 that testimony and resolution be entered into the
18 record, if you will agree to that.

19 MR. CHAIRMAN: Yes, we'll do that.

20 MR. FONDREN: And I'll speak to you
21 very briefly today with respect to the reasons
22 for our opposition to the model act. Most of us
23 in automobile and truck, association have been
24 involved in this debate over the last 20
25 years or so with respect to aftermarket crash

1 parts. Our experience has been, during this
2 debate, that when it comes up in the legislature
3 inevitably all of us -- the legislature winds up
4 passing some type of consumer protection act,
5 recognizing the difficulties that we really have
6 in the crash parts market, both OEM and
7 aftermarket situations that exist, 40 of the
8 50 states now have consumer protection acts
9 that make an effort, at least, to protect
10 consumers with respect to the kind and quality of
11 the crash parts that are used to repair their
12 vehicles. It seems to me that at the core of the
13 discussion here today the question has to be
14 asked about the model act, and that is if
15 certification will perform the wonderful results
16 that have been suggested by its proponents here
17 today, then why would it be necessary and why
18 does the model act restrict and limit and I think
19 eliminate consumer choice and consumer right to
20 know? The proposed disclaimer with respect to
21 crash parts is misleading on its face, in my
22 opinion. It says if your vehicle has either been
23 repaired with OEM parts or with aftermarket crash
24 parts. It doesn't say which or whether or when.
25 That is the reverse of and going in the opposite

1 direction of legislation that 40 of the 50
2 states have already passed in an attempt to keep
3 consumers informed about the kind and quality of
4 the crash parts that they're going to receive.
5 Another question, the model act would prohibit a
6 car company or a company that manufacturers crash
7 parts from owning and operating and maintaining a
8 certifying facility and that's certainly as it
9 should be. Why doesn't the model act also
10 prohibit an insurance company from owning,
11 operating or maintaining a certifying facility or
12 entity? Insurance companies certainly have an
13 economic stake, certainly have an interest in
14 this issue that's equivalent to the kind of
15 interest that we have as repair facilities and as
16 manufacturers and that the consumers have.

17 So it seems to me that it's rather strange
18 that the proposal would not have a prohibition
19 with respect to insurance companies. Another
20 issue I take is let's assume that we do -- that
21 certification would be a good thing. All the
22 model act purports to do is to ask the states to
23 authorize third-party independent certification.
24 It gives the states no responsibilities with
25 respect to the kind and quality of those

1 certifying entities. I think Mr. Gillis said
2 that it does give the states authority to
3 regulate those entities, but I find that rather
4 sparse. If there's any authority in the states
5 to regulate -- to do anything except an annual
6 report, I don't see it in the model act and it
7 seems to me that that's vital. As a matter of
8 fact, an organization such as the Consumers
9 Union, which as you know publishes *Consumer*
10 *Reports*, finds a lot wrong with the crash parts
11 market. It certainly finds plenty of fault with
12 both certified and non-certified crash parts. It
13 suggests that it's a federal issue that ought to
14 be addressed by the Congress and that NHTSA
15 should be required to evaluate crash parts as to
16 their safety, as an example. It seems to me that
17 if the states are going to engage in authorizing
18 certification as a method of curing some
19 problems, that the state should also assume the
20 responsibility for determining whether or not the
21 standards established by those certifiers are
22 adequate to protect the consuming public. CAPA
23 has been in existence for about 15 years and
24 I recall that at the time CAPA was created
25 commitments and promises were made that it was

1 going to eliminate the ongoing problem with
2 respect to crash parts and I think from what
3 you've already heard today, you'll recognize that
4 that has to been accomplished and it would seem
5 to me that the model act in its present form
6 would replicate CAPA, I don't know how many
7 times, but multiply the CAPA's in a fashion that
8 probably would not result in any significant
9 improvement. It might require everybody to hire
10 somebody to do the certifying, but beyond that it
11 seems to me that we're not going very far. In
12 talking to the body shops that we represent and
13 now only about 30 to 40 of our dealers
14 have body shops. The bulk of our dealers today
15 utilize the services of independent body shops
16 rather than in their own, but body shops beat and
17 stretch and hammer and bang these parts around to
18 make them fit and I think that probably accounts
19 for the fact that not many complaints are filed.
20 When someone is trying to get a vehicle repaired
21 and you and I both know that we're most anxious
22 when our vehicles are not available, they don't
23 tend to stop and write letters and send in
24 complaints. They tend to try to make whatever
25 they're working with fit and if they do have to

1 send it back, it's a great loss to them and a
2 great loss to the consumer. It seems to me,
3 ladies and gentlemen, that any benefits that might
4 be derived from the model act are far outweighed
5 by the loss, the potential loss to consumers of
6 no longer having a choice.

7 I frankly think that we do need some new
8 laws with respect to collision repair. I think
9 we need better consumer protection laws, not move
10 in a direction that denies consumers' rights. The
11 notion that certification is of such value that
12 we're going to deny consumers the right to
13 recover economic loss, the model act provides
14 that -- actually creates a presumption that the
15 certified part used was suitable. It seems to me
16 that that's clearly going in the wrong direction.
17 It limits the rights of the individual states to
18 invoke penalties.

19 I think certainly we would not want to -- if
20 we're going to regulate this industry state-by-
21 state, to deny the state to establish penalties
22 for the use of inadequate or poor parts or to
23 create poor results is the wrong thing to do. I
24 would respectfully urge the Committee to reject
25 the model act and not adopt it and send it to the

1 states.

2 MR. CHAIRMAN: Thank you very much.

3 Next, please state your name, whoever.

4 MR. McGUIRE: Thank you. My name is
5 Patrick McGuire. I'm an attorney in Chicago,
6 Illinois. I represent the consumers and also
7 body shops in their disputes with insurance
8 companies. Most of my background is in insurance
9 coverage law.

10 I've had the opportunity to go through this
11 bill and I just would like to offer some of my
12 opinions on it that I see as detrimental to
13 consumers. Right off the bat in the purpose
14 section, it says, "The purpose of this act is to
15 protect the consumers." Most states, I think
16 it's probably 40-plus, recognize a fundamental
17 difference between first-party insurance claims
18 and third-party insurance claims, so you have a
19 wholly different set of rights and obligations if
20 you are the person causing the accident or if you
21 are someone who was hit by somebody else. If
22 you're hit by somebody else, you're considered a
23 third-party claimant. You don't have a contract
24 with that other insurance company. Therefore,
25 they have no right to tell you what parts to use

1 on your car. Certainly if someone goes out and
2 buys a brand name automobile, just like an other
3 type of brand name product, and that is damaged
4 through somebody else's negligence, they would
5 have the right to get their vehicle or other
6 property fixed with the original manufacturer's
7 parts. This bill attempts to lump all consumers
8 into one big category of consumers, so in essence
9 it severely weakens state law that is already on
10 the books. This would fundamentally deviate
11 from, as I said, probably 40-plus state laws
12 that recognize this fundamental difference
13 between two types of insurance claims, and I see
14 that as very problematic. If the company, for
15 example, has what is called a direct dealer and
16 it is similar to the HMO's where you have a
17 preferred provider, what that insurance company
18 has said that in order to be on its program the
19 shop has to agree to use these parts, be they
20 inferior or whatever, on vehicles for people they
21 hit. Okay. Contract law would say the exact
22 opposite, that if they had any right to specify
23 them it would be on their own insured's vehicle,
24 because then the consumer would have that
25 inherent protection of the contract saying that

1 you, as my insurance company, specified these
2 parts, you have to stand behind them. So if you
3 read between the lines, what's happening is
4 they're saying we don't have the confidence in
5 these parts to put them on the vehicles we insure
6 and we're afraid of the liability, so we will put
7 them -- force shops to put them on the vehicles
8 that they fix for other people they hit, that way
9 the consumer and the shop are stuck with the
10 liability completely and they can never come back
11 against the insurance company. The State Farm
12 lawsuit was brought up. If you look at that,
13 \$1.2 billion verdict. It was policyholders only.
14 Okay. All of those consumers whose vehicles were
15 fixed for that entire 10-year period who were
16 hit by State Farm, are without a remedy. So they
17 had no right to put those parts on in the first
18 place, they've had the parts put on, those people
19 are left out in the cold. That is what this
20 model act would promulgate by lumping all
21 consumers into the same general category. And I
22 think that is very dangerous for consumers.
23 Secondly, with respect to the identification
24 process that's mentioned in the purpose, it says
25 identified by mechanized processes or systems.

1 Many of the states, Illinois, for example, says
2 that all of these parts, any replacement crash
3 part, must have a permanent, non-removable
4 marking. Okay. This model doesn't incorporate
5 that. So there would be no way for the consumer
6 or the body shop, even, to follow up on who
7 actually made that part in the same way. So you
8 would actually be weakening existing state law in
9 a number of states. I don't think Illinois is
10 unique in having that Department of Insurance
11 regulation, which regulates that. I'd also just
12 like to go through on a point-by-point basis some
13 of the things that jumped out at me. At the end
14 of Paragraph 1, under definitions, the very last
15 sentence says, "The aforementioned categories may
16 be expanded as new certification standards are
17 developed by entities qualified under Paragraph D
18 of this section." So as of now we're talking
19 about replacement crash parts, but with this
20 open-ended language, it could expand to anything.
21 And I think one of the things that has
22 consistently been brought up here, is how does
23 this differ from the Midas repair shops or the
24 Bausch fuel injector systems or Gabriel shock
25 absorbers, whatever it is? Those companies have

1 all earned their mark in the marketplace through
2 a reputation of good quality service or good
3 quality product. What we're talking about here
4 are names of manufacturers nobody can identify.
5 Trying to track them down if there is a problem
6 would be next to impossible, and especially if
7 those parts aren't even marked in the way that,
8 again, state law currently requires, so I think
9 that's a drawback. Skipping to Section 4 of this,
10 I think it was pointed out in criteria Number 1,
11 there is no restriction on insurance companies
12 being part of the certification process. I think
13 a big view from the industry is that there is a
14 false market out there for these crash parts,
15 okay. Again, they're not being bought because
16 they are perceived by the people, by the
17 professionals who understand how many welds there
18 are. Who understand what type of metals there
19 are, they are not choosing to purchase these
20 parts because they don't have any confidence in
21 them. So again it differs, I think
22 significantly, from the name brand products that
23 we just talked about. Sub Paragraph 2, conform
24 to generally accepted guidelines for independent
25 third-party certification or standards. There

1 are none. And it is just so overly vague and
2 broad, how would anyone ever begin to figure out
3 what those are, and they could vary. I don't
4 think there's anything in here that would give
5 any confidence that two competing third-party
6 certifiers or three or four could set up
7 operation in any individual state and what do you
8 do, especially from an industry perspective of a
9 shop, if two organizations have decertified it
10 and two organizations have certified it? You've
11 created a legal impasse and an absolutely
12 un-navigatable liability situation for a shop that
13 is supposed to install these parts. With respect
14 to subparagraph 3, have adopted written
15 standards, again subjective and it would be state-
16 by-state and I don't think there's any proper way
17 to regulate what is going on or what you even
18 want to accomplish or what the drafters of this
19 law want to accomplish. Subparagraph 4 says they
20 must contract with, but it doesn't give any
21 standards presenting how many parts they must
22 test, how often they must test them, again, it
23 could certainly be a sham. Skipping down to
24 Paragraph 5 where it says certified aftermarket
25 parts.

1 This is where there would be some check on
2 the liability and one of the problems in the
3 industry on a practical basis is who do you go
4 after if there is a problem and with the -- and
5 in the second to last sentence, actually the last
6 sentence says, "All aftermarket crash parts
7 certified shall be warranted by the manufacturer,
8 distributor and/or the insurer." If anything,
9 that's got to be changed to "and." Okay. If it
10 says and/or, it's just going to be finger
11 pointing. The insurer is going to say it's the
12 manufacturer, the manufacturer is doing to say
13 it's the distributor and, again, the consumer is
14 going to be left without any remedy, practically
15 speaking. At the very bottom where it says, "The
16 use of certified," and then where it creates the
17 presumption to be suitable replacement parts.
18 From an insurance coverage perspective, this is
19 what is most troubling to me, because under your
20 contract of insurance right now where it does say
21 like kind and quality, it is the insurance
22 company's burden to prove like kind and quality
23 because that's a limitation under policy
24 benefits. The presumption would be that they are
25 entitled to OEM and they can limit to non-OEM or

1 something else if they can prove it's like kind
2 and quality. This completely reverses that. You
3 put the burden on the consumer to repudiate or
4 overcome the presumption that the parts aren't
5 good. How many consumers can take on an
6 insurance company in that regard? And my final
7 point is shop liability. I think that is the
8 thing that has been completely overlooked here.
9 You're asking professionals who know, through the
10 trade journals, through the reports that are out
11 there, that these parts are not of like kind and
12 quality, they're inferior. You're asking them as
13 professionals to install these with no protection
14 for them. Okay. It would be like asking doctors
15 to prescribe generic drugs that they know are
16 ineffective. You're asking them to install them
17 without any protection for themselves. Thank
18 you.

19 MR. CHAIRMAN: Thank you very much.
20 Next.

21 MR. HOYLE: Okay. My name is Mark
22 Hoyle. I'm here on behalf of the United Auto
23 Workers. I'm here in opposition of the
24 aftermarket crash part legislation. Supporting
25 this initiative would be voting for legislation

1 that would be taking way American workers' jobs.
2 This legislation would promote the using of
3 foreign parts by implying that these parts are
4 equal and as good as the parts made in America.
5 The majority of the crash parts certified by
6 CAPA are not made in America and we all know that
7 these parts are inferior to the parts made here
8 in America by Americans. The concern we have
9 with this model act is having the potential of
10 promoting and regulating parts made in foreign
11 countries. Thank you.

12 MR. CHAIRMAN: Thank you very much.
13 Next.

14 MR. PIERSON: Good afternoon, my name
15 is Mark Pierson. I am the vice president of the
16 Alliance for Automotive Service Providers,
17 approximately four or five thousand nationwide
18 collision shops. I am also first and foremost a
19 collision shop owner. I have had experience with
20 these parts. I've been in the collision business
21 24 years. I've experienced these parts
22 since their inception and up until -- I've
23 experienced these parts two weeks ago.
24 Mr. Gillis made a statement that you cannot judge
25 the quality of these parts just by looking at

1 them or at the parts themselves. I have to
2 dispute that. We do have a number of photos of
3 parts I brought.

4 I'm sorry I don't have enough to go around,
5 but I would provide those to anyone who would
6 like to see them. Three parts were purchased.
7 They all were purchased through a Keystone
8 distributor. They are all designated as Platinum
9 Plus. They all are certified. They all tout
10 IS9000 manufacturing processes. One part was
11 totally unusable. It was rejected by both the
12 shop and the collision shop owner. One part was
13 mis-manufactured, where it had to be actually
14 disassembled, cut and remolded just to install
15 it. And the third part was a fender for a Ford
16 Bronco, which was installed after some slight
17 modifications, but there are still some inherent
18 defects that are clearly visible in photographs.
19 So I'm here to tell you that -- and I would
20 testify to this under oath, I cannot discern any
21 appreciable quality increase in these parts from
22 non-certified parts that I've seen over the past
23 five or six years. So these parts are not OEM
24 quality. The statement was made that the OEM's
25 do not make the greatest parts. I have to tell

1 you that a bad OEM part is the exception. A good
2 non-OEM part is the exception. And we do use OEM
3 parts as our standard in repair, and we are
4 concerned about liability for ourselves and our
5 shops and our livelihoods. Thank you.

6 MR. CHAIRMAN: Thank you, too.

7 MR. KISER: Good afternoon. My name
8 is Kris Kiser. I'm with the Alliance of
9 Automobile Manufacturers. We do, in fact,
10 represent General Motors, but we also represent
11 12 other manufacturers, German, Japanese,
12 British, what have you. The industry is a
13 ferociously competitive one. They rarely agree.
14 My job is oftentimes difficult on this when we
15 do. There's absolute unanimity on this issue.
16 We are opposed to this legislation.

17 This is not a money issue. It is a product
18 issue. We are consumer products companies. We
19 are furiously protective of the integrity of the
20 product we sell for the life of its product and
21 for the time that you have it in your possession.
22 We believe the model act sets up a strong
23 likelihood that consumers will be misled that
24 certified parts are equal to OEM parts. We
25 believe the model act is designed to protect

1 insurance companies, not its expressed intent to
2 protect consumers. We believe the model act is
3 restrictive to competition. We believe the model
4 provides for a flawed certification model.
5 Insurance companies, a category of direct
6 beneficiaries from this act, are not precluded
7 from managing the certifier, however OEMs and
8 parts manufacturers are precluded. Does this
9 mean that it becomes a self-policing business?
10 We've seen self-policing businesses in the
11 corporate marketplace. It's not a good model.
12 State-mandated. Who is going to police the
13 certifiers? We're considered a party in
14 interest, much like the insurance companies, and
15 so you may take what it is we say with a certain
16 grain of salt, and so I was doing a little
17 research the other night through the Internet and
18 I wanted to look at third parties, independent
19 folks, who may have a more legitimate voice, if
20 you will, in the State legislatures. The General
21 Accounting Office (GAO), oftentimes we don't agree, on
22 insurance premiums, the GAO says that in
23 virtually every state that has enacted some form
24 of consumer protection legislation, the insurance
25 and aftermarket crash parts interest have lobbied

1 against such bills. The primary point they have
2 tried to drive home is that such legislation
3 would cause an increase in auto insurance
4 premiums, however, history has shown just the
5 opposite to be true. In almost every state where
6 some form of consumer protection legislation has
7 been enacted, there have been auto insurance
8 premium rate reductions over the last three to
9 five years. Probably the most dramatic example
10 to debunk the warnings of the premium rate
11 increases would be the experience of consumers in
12 Minnesota. Auto insurance premium rates have
13 actually gone down since Minnesota virtually
14 banned the use of aftermarket crash parts.
15 *Consumer Reports Online*, in a direct rebuttal
16 to Mr. Jack Gillis, blow-by-blow your parts are
17 not equal. I invite you to look at the *Consumer*
18 *Reports* document. On pricing, I invite you to
19 look at the National Association of Independent
20 Insurers (NAII) on the pricing study, on the factual
21 percentages on the pricing differentials. We
22 anticipated some questions about parts quality in
23 our materials and our review. There are people
24 in our companies whose careers are parts driven,
25 metallurgists, etc. We have them with us today.

1 They're here to answer your questions. I'm no
2 expert on this or on the parts, but we have the
3 folks here who are, and we certainly will offer
4 them to you to answer any questions you may have
5 because as you may expect, they've been inundated
6 with the metallurgical studies, etc., on this
7 stuff. I can barely say the word. But we have
8 the folks who can explain it to you, the
9 differences in densities and, frankly, I had dinner
10 last night with a metallurgist on this and what I
11 found was interesting were the consumer tests.
12 The six pack on the hood. The car wash that
13 leaves the dent. The palm print. These things
14 are not the same. We're not talking about
15 toaster ovens. We're not talking about DVD's.
16 These are automobiles. They protect you and your
17 family. It's very serious business to us. OE
18 collision parts are identical to those designed,
19 engineered, crash-tested and installed as
20 original equipment, all per motor vehicle safety
21 standards. Non-OE parts are reverse-engineered,
22 as stand alone parts, not as part of the crash
23 energy absorbing vehicle.

24 No federal standards govern their
25 development and no method exists, short of crash

1 testing, to demonstrate compatibility. I heard a
2 lot about monopolies. The first people to buy
3 new products off the line are insurance companies
4 and aftermarket parts people. They ship them
5 overseas. They go to Taiwan. They pull them
6 apart and they start stamping parts. There's no
7 monopolies. We have no patent protection. There
8 is no monopoly here. Anybody can build these.
9 We unequivocally support the right of the
10 consumer to buy OEM, aftermarket, certified, not
11 certified, salvaged, what have you, but we
12 absolutely support the right of the consumer to
13 know. In sum, the Alliance asks that you
14 consider certified aftermarket collision parts
15 legislation, is that you keep in mind that
16 collision parts that we make are made on the
17 original equipment to looking, to the original
18 equipment manufacturers specifications. We
19 believe that collision repair customers should
20 have the right to choose the type of parts used
21 to repair the collision-damaged vehicles.

22 We welcome competition with non-OEM suppliers
23 to meet consumer requirements for quality service
24 and value and are concerned that this legislation
25 may mislead consumers into believing that

1 certified crash parts are equal to OEM parts. In
2 sum, we believe this is simply an insurance safe
3 haven and we would certainly be happy to answer
4 any questions you may have.

5 MR. CHAIRMAN: Any questions, members?
6 Representative Parke.

7 REPRESENTATIVE PARKE: Am I to
8 presume, based on your testimony here, that all
9 of the parts in your catalogue are -- not
10 produced by you are inferior?

11 MR. KISER: No, sir. We're not
12 suggesting that all parts are inferior.

13 We're suggesting that some, these collision
14 parts, may, in fact, may be.

15 REPRESENTATIVE PARKE: May be. Then
16 they may be okay?

17 MR. KISER: Absolutely.

18 REPRESENTATIVE PARKE: How do we know?
19 We have to make a decision? How do we know?

20 MR. KISER: Our concern is the
21 methodology used here. These people are paid per
22 certificate. This is a paid business. They get
23 paid to certify. Each certificate costs money.
24 It's insurance-operated. We're concerned about
25 the potentiality for fraud or abuse.

1 REPRESENTATIVE PARKE: Is there a
2 clearinghouse somewhere that takes in consumer
3 complaints that we can do a comparison between
4 the two types of products?

5 MS. LOFTUS: Let me just say this,
6 when you go out and you can choose a restaurant,
7 you wouldn't go back to a bad restaurant because
8 you know it. In the case of this the free market
9 hasn't been allowed to sort that out, because the
10 collision repairers don't have a choice, the
11 consumers certainly don't have a choice, and so
12 the marketplace hasn't sorted it out and just
13 putting the stamp of approval on parts isn't
14 going to sort it out either. The marketplace, if
15 it didn't have insurance pushing it through,
16 would sort it out, so that collision repairers,
17 if they couldn't fit them, if they couldn't make
18 money putting them on, they would not use them.
19 And then it would fix it. But the market isn't
20 allowed to behave properly.

21 REPRESENTATIVE PARKE: If we pass this
22 legislation, this model act out of here, what's
23 going to happen?

24 MR. FONDREN: We're going to have a
25 war in every state legislature about whether or

1 not such legislation should be passed, if you
2 want opposite, just as we've had over the last
3 20 years. I was tempted at one point, in
4 thinking about this, to support the legislation,
5 because I think a good airing might be healthy at
6 this time and place, but I don't have the liberty
7 of suggesting that to you. I do think that the
8 evidence is such that the proposal of this model
9 act does not justify based on the evidence that
10 we have today and that legislatures, at least I
11 think the legislature in Texas and the Chairman
12 perhaps, or Mr. Counts, can correct me, but I
13 think that the legislature would reject this type
14 of legislation or rewrite it to a very, very
15 great extent.

16 REPRESENTATIVE OSMOND: So every
17 state, if we were to pass this, every state then
18 would be a -- it would be reviewed? Didn't we
19 fight this battle about 10 years ago in the
20 various states?

21 REPRESENTATIVE PARKE: We fought it
22 more recently than that.

23 REPRESENTATIVE OSMOND: I think in
24 Illinois, didn't we fight this battle about
25 eight, 10 years ago.

1 MR. FONDREN: Longer than that in
2 Texas, but it has varied from state to state and
3 as I mentioned in my testimony, the result of
4 that has been that 40 of the states have
5 adopted some type of consumer protection in this
6 area, generally speaking requiring either notice
7 or consent or both by the consumer before
8 aftermarket crash parts can be used on that
9 consumer's vehicle. And as was pointed out by
10 the gentleman on my left, you have these third-
11 party claimants that have no contractual
12 relationship with the insurance company and are
13 having these parts imposed. The war stories that
14 we can relate to you from body shop repairs, from
15 collision repairers about the position of
16 unworthy parts through their body shop will curl
17 your hair.

18 REPRESENTATIVE PARKE: Will we be able
19 to find a way of compromising on the legislation,
20 on that proposed model bill between the two
21 groups, or is it just that there's so much money
22 involved and there's so much battling that we're
23 really not going to be able to find a compromise?

24 I mean there isn't much we could do to make
25 it acceptable to you?

1 MR. FONDREN: The first line of
2 compromise would be not to legislate
3 certification. If certification were to be
4 legislated, I personally believe that it ought to
5 be at the federal level, so that we have a common
6 standard throughout the United States and
7 although I, generally speaking, am not for more
8 government and I'm sure you're not either, I
9 think that the qualifications and the standard
10 and the certification would have to be by a
11 government entity, I really do, to have any
12 competence that it is going to be done in the
13 right way and that some part of interest would
14 not gain some advantage from the certification
15 process.

16 REPRESENTATIVE PARKE: Thank you.

17 MR. CHAIRMAN: Representative Wald.

18 REPRESENTATIVE WALD: Thank you,
19 Mr. Chairman. Can you tell me about how vehicles
20 are recalled last year or the year before or the
21 year before that because of defective hood
22 latches or door locks or truck lids or saying
23 something of that nature that would endanger the
24 passengers?

25 My wife used to have a van and it was a

1 Chrysler product and it seems to me in the course
2 of the time that we owned that vehicle I probably
3 got three or four notices from the company saying
4 if you take this into your dealer, they'll
5 replace it.

6 But in the meantime that product as
7 obviously mis-manufactured, faulty, whatever
8 words you want to use, so that would indicate to
9 me that in the factory process something went
10 wrong and this factory piece of equipment was not
11 what it was supposed to be.

12 MR. KISER: You're absolutely right.
13 I can't speak numerically to the number of
14 recalls. There are any number of them by any
15 number of manufacturers. Automobile assembly and
16 construction, there are thousands of components
17 per car. It's an inherently difficult business
18 and, yes, there are errors, there are problems,
19 things are discovered. Post-manufacturer once
20 things are in use. They are recalled for the
21 benefit of our customers and for your safety, but
22 numerically, no. But certainly in any
23 manufacturing process there are errors. As to
24 the lifetime quality issues that may surface,
25 again I direct us back to the independent third

1 parties, like the certified class, that sued
2 State Farm, whose own internal documents said,
3 you've been lying and it's a billion dollar
4 judgment. They are not the same.

5 REPRESENTATIVE WALD: Is that under
6 appeal?

7 MR. KISER: Absolutely.

8 REPRESENTATIVE WALD: Well, if there
9 was a goof in the manufacturing process of that
10 original piece of equipment, then it follows, in
11 my mind at least, that the equipment
12 manufacturers parts would have the same defects?

13 MS. LOFTUS: You mean the non?

14 REPRESENTATIVE WALD: Am I right?

15 MR. KISER: If they copy a defective
16 product, yes, but certainly there's no attempt by
17 our members to put into consumer discourse a
18 defective product, so ---

19 REPRESENTATIVE WALD: I'm not saying
20 it's deliberate. In the process of manufacturing
21 if it wasn't designed properly or whatever.

22 MR. KISER: Yes, sir.

23 MS. LOFTUS: Can I -- there isn't a
24 recall within the non-OEM parts and you can't
25 distinguish them. The only thing I can say is

1 like LKQ Used Parts destroys the aftermarket
2 parts in its inventory.

3 REPRESENTATIVE PARKE: How do they
4 know which ones they are?

5 MS. LOFTUS: How do they know which
6 ones are that? According to the federal
7 standard, so that should identify that one is a
8 replacement part and they can tell the
9 difference, I've been told by some people at LKQ
10 and also at Greenwood.

11 MR. CHAIRMAN: To follow up on
12 Representative Wald's question, has there ever
13 been, to anybody's knowledge, a recall on a
14 non-OEM, either certified or non-certified?

15 MR. PIERSON: In the last 15
16 years there have been thousands and thousands of
17 parts decertified for various reasons. I have
18 never once experienced a recall or were asked to
19 identify to the consumer that that part is put on
20 a car and that does include items such as hoods.

21 MR. FONDREN: Mr. Chairman, the GAO
22 report that was referred to earlier contains a
23 conclusion that NHTSA doesn't have the ability to
24 trace and recall non-OEM crash parts. It's a
25 failure on the part of the way NHTSA is

1 structured, apparently. I didn't quite
2 understand why they can't, but the statement in
3 the GAO report is that they cannot trace and
4 recall non-OEM crash parts.

5 REPRESENTATIVE KEISER: Mr. Chairman,
6 then anyone on the panel who would like to answer
7 this, both panels have advocated disclosure, but
8 in very different ways. This panel wants
9 disclosure of an aftermarket part if it's used.
10 The other panel said it's worthwhile for us to
11 disclose, then the original manufacturers should
12 disclose. Should original manufacturers disclose
13 all out-sourcing, because that was one of the
14 issues this panel brought up? If a piece is made
15 in Taiwan or whatever and put on as an original
16 part, should it be disclosed? And second, should
17 manufacturers be required to disclose to all
18 customers within a model year when you change the
19 out-source as a supplier and you change it in
20 such a way that it is a significant change.

21 If you talk to anybody who does their own
22 mechanical work, they hate certain American
23 manufacturers, because when they go in to buy the
24 part, the first question they ask is what's the
25 serial number, because the part changes and

1 that's on original parts. Now, should you be
2 required to disclose that to the public, that
3 you're changing parts within a year or that
4 you're bringing in parts from outside your
5 control, subcontracting for all parts? Should
6 that be -- just as you would like them to
7 disclose that their part did not come directly
8 from you?

9 MR. CHAIRMAN: For the record, that is
10 Representative Keiser from North Dakota.

11 MR. FONDREN: Before -- I'm not a
12 manufacturer, but I'd like to offer a comment, if
13 I might, sir. Having been involved in consumer
14 legislation issues for a long time, I recognize,
15 as most legislators do, that you can over-
16 disclose to the point where the disclosure
17 becomes meaningless, and I don't know whether
18 that would be the result of disclosing all out-
19 sourcing or not. But that's not the way the issue
20 arose. The reason we had the issue about
21 disclosure and aftermarket crash parts is a
22 defense mechanism. The imposition of aftermarket
23 crash parts in the collision repair industry has
24 caused legislatures to require the disclosure
25 and/or the consent.

1 So it has arisen as a defense mechanism, not
2 as an offensive mechanism. The insurance
3 companies have been told in Texas and in many
4 other jurisdictions, if you're going to impose
5 these parts on consumers, both first part and
6 third-party, then we're going to require you to
7 disclose, and in many cases, require you to get
8 the consumer's consent. So that's how the issue
9 has arisen, not the other way around.

10 MR. KISER: I would simply say that
11 from the OEM standpoint, I've been handed a note
12 that says, "To the best of our knowledge no OEM
13 part has ever been marketed or branded as
14 anything but OEM." General Motors makes a
15 replacement part, it's not sold under any
16 secondary name, like some folks make dishwashers.
17 It's going to be stamped General Motors.
18 Companies, correct me if I'm wrong, but that's my
19 understanding.

20 MR. CHAIRMAN: Crash parts, hoods and
21 fenders.

22 MR. KISER: Hoods and fenders.

23 REPRESENTATIVE WALD: But it's made in
24 Taiwan.

25 MR. KISER: No, sir, no.

1 MS. LOFTUS: No.

2 MR. KISER: In fact in General Motors,
3 I mean there's been a lot said about General
4 Motors, as recently in China, they make Buicks in
5 Shanghai. There's a great frustration within
6 General Motors because they cannot identify a
7 steel supplier throughout Asia that meets their
8 specific standards on dent resistancy for that.
9 They ship steel from the United States to
10 Shanghai. They don't use Taiwanese steel,
11 because the way it is made -- I invite you to
12 talk to metallurgists, it can't meet the same
13 dent resistancy, and so great pains are taken to
14 meet and make their own standards.

15 MR. CHAIRMAN: Representative Golick.

16 REPRESENTATIVE GOLICK: I thank you,
17 Mr. Chairman. I want to make sure I understand
18 that, just to follow up on Mr. Kiser's remarks.
19 Are you saying then that the manufacturers don't
20 out-source? Is that your statement, that they
21 don't out-source for their production of their
22 replacement parts?

23 MS. LOFTUS: My understanding is this,
24 because I looked at a manufacturing plant that
25 was manufacturing for an OE and it was in Ohio

1 and it was, in fact, an out-sourcing, but it was
2 totally supervised by the car maker. I mean
3 every step of the way the car maker was there
4 holding the hand. And the dyes were the OE dyes
5 from the manufacturing. In some cases they were
6 modified.

7 REPRESENTATIVE GOLICK: So the out-
8 sourcing that the manufacturers do is always under
9 their control, the operating control of the
10 manufacturer itself.

11 MS. LOFTUS: That's my understanding.

12 REPRESENTATIVE GOLICK: At the
13 location of the production; is that correct?

14 MS. LOFTUS: That's how I saw it.

15 MR. KISER: My understanding is that
16 if it's not done in the actual plant, it is also
17 done off the actual tool and dye.

18 MS. LOFTUS: With some modification
19 sometimes.

20 REPRESENTATIVE GOLICK: Let me follow
21 up on that. I'm still not sure I understand
22 that. If we can just go ahead and go forward
23 from that. A lot of people have made some
24 comments about a GAO report as I was furiously
25 trying to go through this testimony, I found a

1 part of a Keystone statement that said, "The
2 General Accounting Office was asked to study the
3 safety and availability of aftermarket crash
4 parts. They made no recommendations, nor did
5 they express any concerns regarding the safety of
6 these parts. In its conclusion the GAO report
7 also maintained that although NHTSA has authority
8 to regulate aftermarket crash parts, the agency
9 has not developed safety standards for them
10 because it has not determined that any
11 aftermarket crash parts contained any major
12 related defects." It goes on to quote GAO as
13 saying, "NHTSA has not taken any action to
14 regulate aftermarket crash parts because studies
15 conducted to date," and I don't know the date,
16 "because studies conducted to date and other data
17 and analyses do not demonstrate there are safety-
18 related problems with the parts." Now, did GAO
19 change its mind or is there a timing problem here
20 in these potentially conflicting statements?

21 MR. KISER: Can you address this? I
22 mean you're familiar with the NHTSA language.

23 MS. LOFTUS: I don't think that what
24 he quoted was exactly from the GAO report. It
25 was from another source, is that's what's

1 confusing to you?

2 REPRESENTATIVE GOLICK: I'm just
3 reading what I was given, quote GAO.

4 MS. LOFTUS: That's what the GAO said?

5 ASSEMBLYWOMAN CALHOUN: It says on
6 pages 19, 20 and 21, all GAO report. Maybe the
7 language is different?

8 REPRESENTATIVE GOLICK: It could be a
9 different report.

10 MR. KISER: It could certainly be.
11 This is just from the GAO Web site. This is a
12 summation. I just pulled it off the net. So
13 it's ---

14 REPRESENTATIVE GOLICK: Maybe we'll
15 flesh through the discrepancy.

16 Let me just ask another question, and this
17 follows up on what Sheila said earlier. We
18 heard a lot of comments from this panel about
19 everybody knows their area. And we heard a lot
20 of anecdotal evidence. My understanding from
21 what you said before, Mr. Kiser, is that you have
22 some empirical data with you that conclusively
23 proves that aftermarket crash parts are, in fact,
24 inferior; is that right?

25 MR. KISER: I'm not speaking to all

1 crash parts. There are specific instances. This
2 is an analysis of GM and CAPA-certified Grand Am
3 hoods and fenders, which speak to any number of
4 the fit, finish, quality, metallurgical
5 components, etc., and there are folks here that
6 can speak to that, but there are definitely
7 demonstrated instances where they are considered
8 inferior. I don't think there would be ---

9 REPRESENTATIVE GOLICK: Are we
10 talking -- Mr. Gillis came up and here's what I'm
11 trying to get clear in my mind. I'm just trying
12 to understand this. Mr. Gillis was speaking in
13 terms of -- he was using some percentages, parts
14 of this percentage and so forth. Is it the
15 Alliance's position that -- can you make
16 affirmative statements to say that "X" percentage
17 of aftermarket crash parts are inferior and here
18 are the tests proving it?

19 MS. LOFTUS: Well, I think Jack Gillis
20 even said that 12 percent were inferior,
21 because he's saying only three percent are
22 certified.

23 REPRESENTATIVE GOLICK: I'm going to
24 ask you ---

25 MS. LOFTUS: Those were his own

1 statistics.

2 REPRESENTATIVE GOLICK: I'm asking
3 you ---

4 MS. LOFTUS: But *Consumer Reports*
5 also said that aftermarket parts were inferior.

6 REPRESENTATIVE GOLICK: I'm interested
7 in what the manufacturers have to say.

8 MS. LOFTUS: Oh, I see.

9 REPRESENTATIVE GOLICK: I want to know
10 do the manufacturers have data that they can
11 present us so we can see that proves
12 consistently, that's the gist I got in your
13 comments before, that these parts, in fact,
14 empirically have been proven to be inferior.

15 MR. KISER: I can't answer that
16 question directly, but what I can do is ask the
17 companies to see if they have empirical data that
18 they can provide to you. There are specific
19 instances where they basically said, "Show us.
20 Prove to us that our parts are inferior." And
21 there are a number of studies.

22 MR. GILBERT: George Gilbert with Ford
23 Motor Company. We conducted testing in 1994,

24 MR. CHAIRMAN: Come up to the mic.

25 MR. GILBERT: I'm sorry. My name is

1 George Gilbert with Ford Motor Company, crash
2 parts merchandising manager.

3 In 1994 we conducted an extensive testing
4 program, aftermarket parts, both certified and
5 non-certified. We publicized that data at NASE
6 with a press release. It was in *Automotive News*.
7 We invited every insurance company in the United
8 States -- we sent our executive summary of those
9 results, invited them to come and look over the
10 full test results, which are two volumes that are
11 about that thick, so the data is out there. Now,
12 we also tested in 1986; we tested again in '94;
13 *Consumer Reports* tested in 1999; and you see in
14 GM's report now. The bottom line, there's a
15 theme running through here, that in four major
16 areas, we talk about fit, finish, structural
17 integrity and dent resistance, these parts
18 consistently, in the last 14 years, have
19 never been proved. And in our testing we could
20 find no substantial difference between
21 aftermarket certified and non-certified parts.
22 And that data has been available since 1994.

23 REPRESENTATIVE GOLICK: Let me ask one
24 other question. This goes to what Representative
25 Parke was saying. Is this just a matter of

1 disclosure? Is this just a matter of being --
2 let's go ahead and say to ourselves, well,
3 there's no, you know -- I'm assuming you can come
4 forward with empirical data that makes that case.
5 I'll look forward to taking a look at it. Let's
6 say that didn't exist. Just for the sake of
7 argument. Would it then be just a matter of
8 disclosure, so people could know this is not an
9 OEM part, however, it is 50 dollars less,
10 according to testimony we heard before -- consumer,
11 make the decision?

12 MR. GILBERT: I really think the
13 answer is that it's been said several times here.
14 It's a very relevant question.

15 Why are you not considering legislation for
16 radiators, for alternators, for starters, for oil
17 filters, for air filters?

18 We compete, as OEM manufacturers, in that
19 market every day. The difference is in a
20 collision market the consumer doesn't have the
21 choice. In every one of those others, they do
22 have the choice. They can walk down the aisle,
23 they can pick whatever they choose, based on the
24 quality and the price. In this particular
25 instance, through the insurance company's program

1 of direct repair programs, they get to choose
2 and that's exactly why the customers of State
3 Farm sued State Farm, because they were not
4 informed and the judge's ruling in that case said,
5 even though is it under appeal for a second time,
6 the judge's ruling at the last appeal said that
7 you deceived your customers by not telling them.
8 So it is a disclosure issue. You, as a consumer
9 and I, as a consumer, should have the right to
10 choose the type of parts that we want to have our
11 vehicle repaired with. That certainly doesn't
12 exclude aftermarket parts or salvage parts or
13 certified parts, but it allows me, as a consumer,
14 to have the voice that I have in every other part
15 that I want to buy for my vehicle, where I choose
16 to buy my vehicle, what type of vehicle I choose
17 to buy, what type of gas I choose to put in it.
18 Why shouldn't I have that same right? What is so
19 wrong about giving that customer the same right
20 when it comes to collision repair?

21 REPRESENTATIVE GOLICK: Should the
22 prices, as well, be disclosed at the same time?

23 MR. GILBERT: The prices -- there is
24 one argument about the prices that always kind of
25 gets me. It's presuming that the aftermarket

1 part is the correct price. If you go to buy a
2 Rolex and a Timex and you lose your Rolex and you
3 want to replace it with a Timex because it's
4 cheaper, does that mean that that is the right
5 price for that particular part? You know, when
6 we talk about three percent, it's only three
7 percent because that's only what the
8 manufacturers choose to make. They don't choose

to be a hi
Z** -Fk F7gh volume of it. It's called

4 cherry picking and in our case they picked left

15

front fenders for Taurus and F-Series vehicles

and fenders, because those are the ones -- and

that's competition and that's gh volume of it. It's called

14 cherry picking and in our case they picked left

15 front fenders for Taurus and F-Series vehicles

16 and fenders, because those are the ones -- and

17 that's competition and that's great and we face

18 competition every day for car sales and parts.

19 But in this particular instance, in the insurance

20 business, we don't face competition in a free and

21 open market because of the dictates of the

22 insurance industry, and that's why they want

23 these parts certified, because they can't stand
24 up on their own, as do radiators and
25 alternators and air filters and oil filters.

1 Because if they did, you wouldn't be
2 considering the legislation. There wouldn't be
3 any need to consider the legislation.

4 MR. CHAIRMAN: We're going to have to
5 cut it short, because we've already reached our
6 two-and-a-half-hour time limit, but we do need to
7 hear from Mark Skinner, from AIA on their
8 proposal and -- unless everybody wants to
9 continue and stay over.

10 REPRESENTATIVE MELIO: Can I just ask
11 one question?

12 MR. CHAIRMAN: Well, there
13 are four people who want to ask one question and
14 I've got three. Y'all can stay there if you want
15 to. If Mark Skinner would come up and maybe he
16 can stand up and give his presentation and that
17 way we can then decide whether we want to -- He's
18 not going to stand up.

19 MR. SKINNER: It's only up here. I'm
20 a panel of one. Thank you very much. I know
21 time is short and the amendment that we proposed
22 is relatively simple. My name is Mark Skinner.
23 I'm vice president for State Programs with the
24 American Insurance Association. We represent
25 over 410 insurers across the United States and

1 our members write about 16 percent of the
2 private passenger auto market across the country.
3 Some of the members that we represent do use only
4 OEM parts; others don't. Some use aftermarket
5 crash parts and still others give insurers --
6 excuse me, give their policyholders an option to
7 use OEM parts at a higher premium. Others do
8 only allow OEM parts, simply for the older
9 vehicles. Clearly, we believe that consumers
10 benefit from competition in crash parts and,
11 ultimately, the reduced cost of the replacement
12 costs is passed onto consumers through savings in
13 their policy premiums, as well as in those body
14 shop costs that they're obligated to pay
15 themselves. The issue before us today is not
16 about cost, but the issue today is really about
17 quality and whether the quality is acceptable and
18 what sort of guarantee is needed to provide the
19 consumer that quality guarantee. I want to be
20 perfectly clear that we do believe that CAPA does
21 an excellent job in certifying parts. I do
22 believe that we only have one member that is a
23 CAPA vendor at this point in time, so what I'm
24 speaking from is perhaps a different perspective
25 than other insurers. We do support certification

1 being legislated as a way by which insurers may
2 use aftermarket parts, and accordingly we support
3 the proposed model legislation as far as it goes,
4 but we do believe that it could be improved by an
5 amendment providing other pro-competitive,
6 pro-consumer alternatives beyond certification.
7 What we would like to do is to enhance
8 competition and allow consumers more options. We
9 support the model -- we would support the
10 amendment to the model that would allow consumers,
11 or, allow insurers to certify and guarantee parts.
12 Insurers are in the business of assessing and
13 assuming liability and if an insurer would make
14 the decision that they would prefer to provide
15 the guarantee themselves than use a certified
16 aftermarket part, we believe that the insurer
17 should have that option and be able to provide
18 that in the marketplace. Insurers are very
19 mindful of the legal risk that they're
20 undertaking in making such an obligation.

21 So in short we do believe that the model, as
22 proposed, consumers would be able to choose among
23 insurers that pay for certified or OEM parts or
24 for insurers that agree to stand behind their
25 crash parts. Our amendment is about consumer

1 choice and we believe it would enhance the proposal
2 before you today.

3 MR. CHAIRMAN: Any questions of Mark?
4 Representative Parke.

5 REPRESENTATIVE PARKE: It's been said
6 that the OEM parts cannot stand up to the
7 scrutiny of three criteria, what were the three
8 criteria. The non-OEM, yes, cannot stand up to
9 the quality of dents -- what were the other ones?

10 MR. GILBERT: Fit, finish, structural
11 integrity.

12 REPRESENTATIVE PARKE: Okay. Do you
13 agree with that?

14 MR. SKINNER: I don't know whether
15 it's my place to agree or disagree with that.
16 What we're talking about here is the consumer
17 making the choice in what type of product they
18 would like to purchase and pay for and if the
19 consumer, when he's making a decision on what
20 insurance policy he would like to acquire, makes
21 the decision that he is willing to purchase his
22 policy from a carrier that's willing to use only
23 OEM parts or to utilize certified aftermarket
24 parts, and that carrier is willing to stand
25 behind it, then the quality guarantee is there

1 ultimately. I personally haven't reviewed the
2 data, so I can't answer your question directly,
3 but I believe -- but the answer is in the
4 consumer making an informed decision.

5 REPRESENTATIVE PARKE: Would you have
6 this spelled out in the insurance policy that
7 each consumer purchases?

8 MR. SKINNER: I don't know if it would
9 be a part of the actual policy language. I
10 believe when the consumer is purchasing the
11 policy some carriers do provide their policy-
12 holder a choice of the type of coverage that
13 they're wanting to purchase in terms of
14 replacement parts and certainly the disclosure
15 provisions that are provided for as well, the
16 identification provisions, come at the time of
17 the actual repair.

18 REPRESENTATIVE PARKE: Would the agent
19 explain this to the consumer?

20 MR. SKINNER: My expectation is that
21 if they're purchasing through an agent that it
22 would be a part of that transaction, yes.

23 REPRESENTATIVE PARKE: What if you've
24 buying from a direct writer, like GEICO?

25 MR. SKINNER: Whatever the point of

1 purchase would be. I mean there would be an
2 opportunity -- if the carrier offered a variety
3 of choices in terms of the level of replacement
4 part coverage that they were offering, some may
5 not offer a choice, some do offer a choice at
6 perhaps a higher premium, so at the point that
7 there is an option for the consumer to make that
8 election, whoever is selling that policy to them,
9 would provide them those options, be it through
10 an agent, through a direct writer, directly from
11 the company.

12 REPRESENTATIVE PARKE: Thank you.

13 MR. CHAIRMAN: Representative
14 Lafayette.

15 REPRESENTATIVE LAFAYETTE: Yes. From
16 your perspective, are you talking about policies,
17 coverage, what consumers are willing to pay for,
18 are you distinguishing between aftermarket crash
19 parts, are you distinguishing between cosmetic
20 parts and safety parts?

21 MR. SKINNER: All we're talking about
22 here today are cosmetic parts.

23 REPRESENTATIVE LAFAYETTE: We're
24 talking about cosmetic parts, so therefore safety
25 is not a primary issue in this legislation?

1 MR. SKINNER: Correct, and I attach
2 with my testimony ---

3 REPRESENTATIVE LAFAYETTE: Are you
4 also saying that the insurers that you represent,
5 if they were to recommend non-OEM parts, they
6 would have no problem in standing behind those
7 cosmetic parts that are properly installed?

8 MR. SKINNER: Correct.

9 REPRESENTATIVE LAFAYETTE: In the
10 experience of your adjusters and the adjusters
11 representing the industry, do you think that the
12 profitability of the repair shops factor into
13 their desire to support the manufacturer as far
14 as only allowing OEM cosmetic parts to be used?

15 MR. SKINNER: It would be hard for me
16 to step in and speculate as to what their motives
17 were. Certainly cost is an issue that we're
18 talking about here today.

19 REPRESENTATIVE LAFAYETTE: There is
20 that possibility.

21 MR. SKINNER: Well, the cost of the
22 parts goes to the profit.

23 REPRESENTATIVE LAFAYETTE: What would
24 be, would you say, the average markup of a
25 non-OEM part?

1 MR. SKINNER: I don't have that
2 information.

3 REPRESENTATIVE LAFAYETTE: I think
4 that's important consideration. It's my
5 understanding that the discount given to
6 wholesale purchaser or authorized shop or dealer
7 who buys the part to discount the parts that will
8 then be sold to the retail client. It's also my
9 understanding that OEM manufacturers give larger
10 discounts to a person on theirs to resale the
11 parts or use them themselves and I believe that
12 that also -- if we know that information, that
13 might be part of what the overall discussion is
14 over and above what the cosmetic part, how it
15 fits.

16 MR. SKINNER: That question might be
17 better directed to the manufacturers on what
18 their resale policies are. I can't answer that.

19 MR. CHAIRMAN: Mr. Osmond, you have a
20 question for Mark, because I think people have
21 questions for the others.

22 REPRESENTATIVE OSMOND: Just one quick
23 question. If the insurance company sells a
24 policy and a consumer buys it and says, I'll be
25 very happy to keep that aftermarket -- the

1 aftermarket part in my car, knowing that I have a
2 guarantee from XYZ Company and I put all those
3 parts in. How long is the company going to
4 guarantee those parts? What if the company three
5 years from now, finds out man, bad mistake. These
6 parts are terrible. It's costing us a lot of
7 money. We have to go back in and replace them.
8 January 1st, we're no longer going to do that.
9 There's an example, I think, out there a little
10 bit in the Seattle-based company that used to
11 have a strong guarantee for repairs and they
12 recently pulled that back out of their contract.
13 So how would you think practically this would go,
14 as long as the car still runs, it will always
15 have that guarantee, or what would you think?

16 MR. SKINNER: I couldn't speculate as
17 to what the individual guarantees that individual
18 companies would want. In fact, I would think
19 that might be part of the competition in the
20 system. I think the ultimate guarantor here is
21 that insurers are regulated in each state and
22 under unfair claims settlement practices laws and
23 there is an ultimate body for which a consumer
24 could go for redress should ---

25 REPRESENTATIVE OSMOND: So this is an

1 alternative, though, to certification, and then
2 each of the departments would have to analyze
3 each of the insurance companies' guarantees from
4 the consumer standpoint?

5 MR. SKINNER: If there were issues
6 raised in terms of their claims settlement
7 practices, a consumer could go to the department.

8 REPRESENTATIVE OSMOND: I would think
9 there would be a problem also if I sold my car to
10 the next person down the way and now these parts,
11 perhaps some of them are limited, however you
12 feel under the debate, but if they, in fact, turn
13 out to be inferior, I'm not sure where the
14 consumer would go who bought that used car.

15 Does he go back to the carrier that offered
16 the guarantee at the time of it? What if I
17 didn't even know that there was an accident where
18 the parts were used? Should there be some
19 follow-up then? Would you think that once a car
20 is sold, the accident record should follow the
21 car showing which carrier was in force at the
22 time of the claim? I don't know how that
23 practically would work?

24 MR. SKINNER: I would expect there
25 would be some provision for the transferability

1 of a warranty or guarantee, and it probably
2 matters the manner in which the car is resold,
3 whether it's through a dealer, where they have to
4 disclose, or whether through a private sale.

5 REPRESENTATIVE OSMOND: You think your
6 member companies would go along with that? Is
7 that an issue that's come up yet?

8 MR. SKINNER: I think that's -- what I
9 think is that a company may decide that it's in
10 their competitive advantage to design a program
11 in which they provide a guarantee that gives
12 those consumers those kinds of options and
13 answers those questions. If a program that the
14 company designs, in terms of providing the
15 guarantee to the consumer, is not satisfactory,
16 then the consumer would have an alternative to go
17 somewhere else to provide -- to look for the kind
18 of guarantee they want. So all companies may not
19 offer the same level of the same type of
20 guarantee if they choose to go this route.

21 REPRESENTATIVE OSMOND: Thank you.

22 MR. CHAIRMAN: Assemblywoman Calhoun,
23 you had a question?

24 ASSEMBLYWOMAN CALHOUN: Mine is just
25 generally a comment. I think I have learned

1 today probably more than we need to know about
2 both of these topics, but I'd like to make these
3 few observations and then welcome any comments
4 that are coming. During the discussion I wrote
5 down what I felt and just touched upon this.
6 Number 1, Safety; Number 2, cost; Number 3,
7 disclosure. But the safety issue which I was
8 going to bring up was the fact that the GAO,
9 which is the federal agency, had basically made a
10 decision that they stayed out of it because they
11 did not see the aftermarket or even the repair
12 item OEM work aftermarket as having a safety
13 component although in some of the hoods, you
14 could certainly have an argument. Under cost, I
15 would be very interested if this discussion
16 continues past this seminar, that I could
17 actually see some cost comparison. I'd like to
18 see on paper what an OEM part would cost and what
19 a similar part would cost in the aftermarket, so
20 I know whether we're talking about \$800 versus
21 \$300 and then debate whether they're similar or
22 not. The third is disclosure. I totally agree
23 with all of you that they disclose and I would
24 offer the fact that in my own health insurance
25 and as was talked about, we're talking very

1 similar to what the generic industry was and the
2 generic drugs that you had your product that was
3 made by the manufacturer and you had "X" number of
4 dollars and then when generics came along and
5 they were certified, they were less. My
6 insurance company will, if there's nobody else,
7 will pay for the product at full market. If
8 there's a generic, it will pay for the generic.
9 If there's a generic and I want the other, I have
10 to pay the difference and I think -- and I don't
11 think this is a good answer, but it's probably
12 one that makes some sense is if you have your car
13 repaired that they would give you the amount of
14 what the value is and then you could go shopping
15 and I would think that the consumer then has to
16 be very careful shopping. I use that as an
17 example of why spark plugs and the other items
18 have gone to having alternative sources because
19 when you walk in the store and if you saw one
20 product at \$15.00 and you saw another that had
21 come to develop a good reputation at \$9.95 and
22 you were comfortable, you would at least by an
23 informed consumer, so that you felt you were
24 getting that Delco battery versus, I'm going to
25 say, Ford battery that you -- they may be one and

1 the same, but that you would have the opportunity
2 to make a decision. I do believe leased vehicles
3 should be excluded, because I myself purchased a
4 one-year old car from one of the manufacturers,
5 happened to be General Motors, and I felt
6 comfortable that I was getting that General
7 Motors car, so during the lease period I don't
8 think we should require anyone to put an
9 aftermarket on a car that will substantially
10 later be sold by a manufacturer. So that if I
11 had a Ford Taurus, I have the right to know that
12 after lease it's coming to me with still all Ford
13 parts. I think that makes common sense. I also
14 would think that perhaps there's a way, maybe
15 sounds naive, that the certifying agency would be
16 mutually funded by both the OEM and the after-
17 market, because then you don't have anyone
18 with -- obviously we have two separate sets of
19 interests here. And that it very well may be, and
20 I've heard that there are aftermarket parts that
21 in many cases are as good as the OEM. So I think
22 disclosure and knowledge go a long way and I
23 think that the certifying agency, should there be
24 one, if there's a way of getting both entities
25 together, so that you could have a certified OEM

1 part and you can also have a certified after-
2 market. But that the same criteria would be used
3 in judging both. Thank you very much.

4 MR. CHAIRMAN: Representative Counts.

5 REPRESENTATIVE COUNTS: Yes, I was
6 naive enough in Scottsdale, when we were in
7 Executive Committee, I made a motion and it
8 carried that we have an extra period of time to
9 see if we couldn't compromise this issue, but
10 from today's testimony and from everyone having
11 so many other questions that didn't get asked,
12 this is an issue that I would suggest that we
13 probably need to have another hearing of this
14 kind and let the people have the opportunity to
15 offer more knowledge where we can make a better
16 informed decision, maybe in Boston. And I
17 just -- there's much more information been
18 disclosed today than we had in our hearing in
19 Scottsdale, so I would at least give it some
20 thought and it's pretty ---

21 MR. CHAIRMAN: I think that's
22 something that we will discuss tomorrow. We're
23 not going to take any votes today, but I think
24 it's something that we should all consider.

25 REPRESENTATIVE COUNTS: Well, in my

1 motion -- I made the motion that we would vote
2 this next --- tomorrow, but it doesn't appear to
3 me that we have enough information to make an
4 informed decision.

5 MR. CHAIRMAN: Tony.

6 REPRESENTATIVE MELIO: Tony Melio from
7 Pennsylvania. Mr. Gillis said he would have some
8 information in four to six weeks, so that will
9 help. We can sit down and talk.

10 MR. CHAIRMAN: I think it's important
11 that we all try to remember, as Assemblywoman
12 Calhoun was talking, that the whole issue here is
13 whether or not we are going to pass the model
14 bill that will allow a certifying agency to
15 determine what is like kind and quality and that
16 is why it's in the insurance realm, because
17 policies say that when you by your own policy
18 that it will be replaced or repaired with like
19 kind and quality, which kind of makes me go back
20 to what Assemblywoman Calhoun says, even though
21 you look at what you send, looks like you don't
22 believe like kind of quality is non-OEM because
23 you don't want it on a car that you bought
24 through a lease. Because you want it to be all
25 OEM, which would seem to say that you don't have

1 the confidence in non-OEM to be like kind and
2 quality.

3 ASSEMBLYWOMAN CALHOUN: That's not
4 what I'm saying. I'm saying that when I
5 purchased my Cadillac, 2001 with 10,000 miles on
6 it, at that point of purchase I wanted to be
7 comfortable that -- and I'm not saying that it
8 would be -- that it's like kind and quality, but
9 I'm saying I think it's unfair to a company to
10 have to take a car back that may not have its
11 parts upon it, so that when it re-markets it, it
12 could be required to sell a car that had a part
13 that it did not stand behind, and that is what
14 I'm saying.

15 MR. CHAIRMAN: We will reconvene
16 tomorrow and continue this discussion. 9:30 a.m.

17 (Whereupon, the seminar was
18 concluded at 3:58 p.m.)

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