

**1999 DRAFTING REQUEST**

**Bill**

Received: **01/5/99**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB:

For: **Stephen Freese (608) 266-7502**

By/Representing: **his office**

This file may be shown to any legislator: **NO**

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Insurance - auto**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Insurers' responsibilities with respect to the use of original manufacturer replacement parts

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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↳ Not Needed

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**Instructions:**

See Attached

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May Contact:

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Subject: Insurance - auto

Extra Copies:

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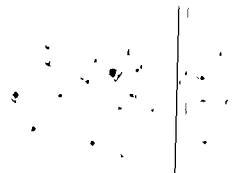
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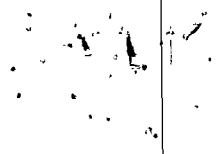
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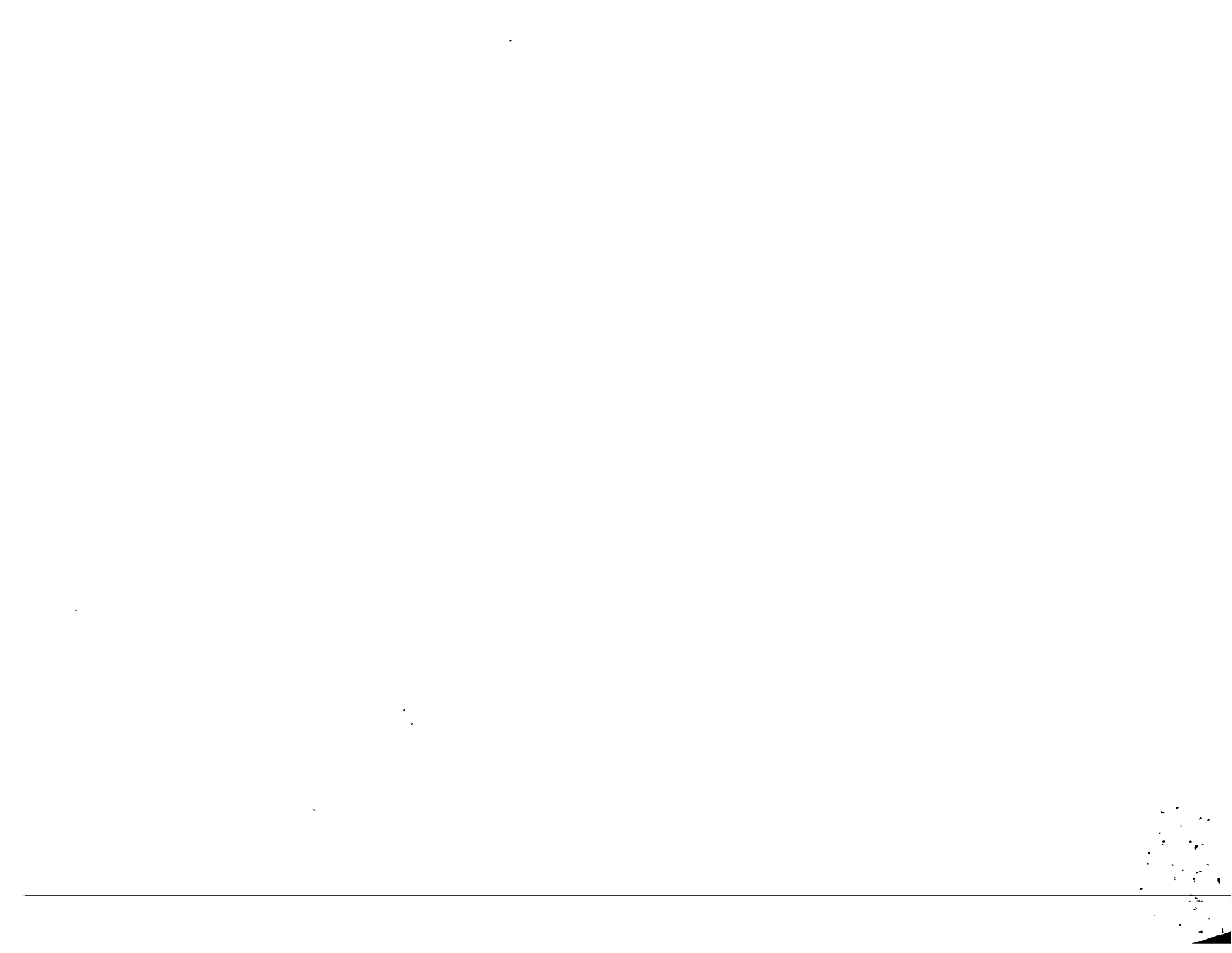
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Wisconsin Speaker Pro Tempore  
**Representative Stephen J. Freese**

**Memorandum**

To: Pam Kahler, LRB Attorney  
From: Representative Steve Freese  
Date: December 28, 1998  
Re: OEM Parts Legislation

---

Please draft a bill with the following language additions and deletions found attached to this memorandum.

If you have any questions please contact Rob in my office at 6-7502.

Thank you for your assistance!

**Fifty-First Assembly District**

Office: Post Office Box 8952 • Madison, Wisconsin 53708-8952 • (608) 266-7502 • Fax: (608) 261-9474 • Rep.Freese@legis.state.wi.us  
District: 1121 Professional Drive • Dodgeville, Wisconsin 53533 • (608) 935-3789

Printed on recycled paper with soy-based ink.

47-  
see 13096 for  
analysis

# OEM Legislation (Draft, December 21, 1998)

**Purpose:** Changes to Wis. Stats. §632.38 are needed to allow consumers to choose original equipment manufacturer replacement parts.

**General Approach:** The existing notice provisions set forth in Wis. Stats. §632.38(2)-(4) do not accomplish the intended result of providing the "insured" with sufficient information on use of nonoriginal manufacturer replacement parts. To provide the insured with an informed choice, those provisions would be changed as follows:

- Wis. Stats. §632.38(2):
  - Delete the title "Notice of Intended Use" and replace with "*Authorization to use nonoriginal manufacturer replacement parts.*"
  - Keep the following language:  
An insurer or the insurer's representative may not require directly or indirectly the use of a nonoriginal manufacturer replacement part in the repair of an insured's motor vehicle, unless the insurer or the insurer's representative
  - Delete remaining existing language (see attached) and add the following:  
*obtains written authorization from the insured before a nonoriginal manufacturer replacement part is installed on the insured's motor vehicle. The insurer or the insurer's representative shall not require as a condition of payment of a claim for repairs to insured's vehicle that a replacement part must be a nonoriginal manufacturer replacement part. Written authorization for the use of a nonoriginal manufacturer replacement part for the purpose of this subsection must be obtained on a form entitled "Replacement Parts Notice and Authorization Form" that is attached to a copy of the collision repair estimate. The form shall include only the following information:*
    - (a). A statement that the insured may choose replacement parts made by or for the manufacturer of the insured's motor vehicle, and that such choice would not affect the insurers obligation to cover repairs to insured's vehicle.*
    - (b). A clear identification of each nonoriginal manufacturer replacement part that upon written authorization by the insured is available for use in the repair of the insured's motor vehicle.*
    - (c). A clear description, consistent with sub. (1) definitions, of what constitutes a nonoriginal manufacturer replacement part as compared to an original manufacturer replacement part.*
    - (d). Two signature lines for the insured's consideration. The first signature line shall note that the insured's signature on that line authorizes the use of nonoriginal manufacturer replacement parts. The second signature line shall note that the insured's signature requires the use of only original manufacturer replacement parts. The form can be written to allow the insured to chose some nonoriginal and some original replacement parts for the same repair.*

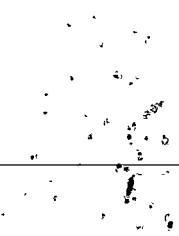
require  
repair  
shop to  
be involved?

- Wis. Stats. §632.38(3) [Delete]
- Wis. Stats. §632.38(4) [Delete]

copy of estimate of the cost of repair

see (3)(c) → repair person can't be required to give notice

5



the insurer is subrogated to the injured person's claim against the insured to the extent of the payment and is entitled to reimbursement by the insured.

History: 1975 c. 375, 421; 1979 c. 102, 104, 177.

Legislative Council Note, 1979: This provision is continued from former s. 632.34 (8). It is changed from a required provision of the policy to a rule of law. It is not the kind of rule that needs to be put in the policy to inform the policyholder. Indeed, the policyholder should receive no encouragement to fail to cooperate. This is a relaxation of present law. [Bill 146-S]

Prejudice is not a component of the defense of noncooperation. Schaefer v. Northern Assurance Co. 182 W (2d) 148, 513 NW (2d) 16 (Ct. App. 1994).

**632.35 Prohibited rejection, cancellation and nonrenewal.** No insurer may cancel or refuse to issue or renew an automobile insurance policy wholly or partially because of one or more of the following characteristics of any person: age, sex, residence, race, color, creed, religion, national origin, ancestry, marital status or occupation.

History: 1975 c. 375; 1979 c. 102.

**632.36 Accident in the course of business or employment.** (1) **RATE AND OTHER TERMS.** An insurer may increase or charge a higher rate for a motor vehicle liability insurance policy issued or renewed on or after April 16, 1982, on the basis of an accident which occurs while the insured is operating a motor vehicle in the course of the insured's business or employment, only if the policy covers the insured for liability arising in the course of the insured's business or employment. An insurer may issue or renew a motor vehicle liability insurance policy on or after November 1, 1989, on terms that are less favorable to the insured than would otherwise be offered, including but not limited to the rate, because of an accident which occurs while the insured is operating a motor vehicle in the course of the insured's business or employment, only if the policy covers the insured for liability arising in the course of the insured's business or employment.

(2) **CANCELLATION OR NONRENEWAL.** An insurer may cancel a motor vehicle liability insurance policy that is issued or renewed on or after November 1, 1989, or refuse to renew a motor vehicle liability insurance policy on or after November 1, 1989, on the basis of an accident which occurs while the insured is operating a motor vehicle in the course of the insured's business or employment, only if the policy covers the insured for liability arising in the course of the insured's business or employment.

History: 1981 c. 178; 1989 a. 31.

**632.365 Use of emission inspection data in setting rates.** An insurer may not use odometer reading data collected in the course of an inspection under s. 110.20 (6) or (7) as a factor in setting rates or premiums for a motor vehicle liability insurance policy or as a factor in altering rates or premiums during the term, or at renewal, of such a policy. However, an insurer may use such data as a basis for investigation into the number of miles that the motor vehicle is normally driven.

History: 1991 a. 279; 1993 a. 213.

**632.37 Motor vehicle glass repair practices; restriction on specifying vendor.** An insurer that issues a motor vehicle insurance policy covering the repair or replacement of motor vehicle glass may not require, as a condition of that coverage, that an insured, or a 3rd party, making a claim under the policy for the repair or replacement of motor vehicle glass obtain services or parts from a particular vendor, or in a particular location, specified by the insurer.

History: 1991 a. 269.

**632.38 Nonoriginal manufacturer replacement parts.**

(1) **DEFINITIONS.** In this section:

(a) "Insured" means the person who owns the motor vehicle that is subject to repair or the person seeking the repair on behalf of the owner.

(b) "Insurer's representative" means a person, excluding the person repairing the motor vehicle, who has agreed in writing to represent an insurer with respect to a claim.

(c) "Motor vehicle" means any motor-driven vehicle required to be registered under ch. 341 or exempt from registration under s. 341.05 (2), including a demonstrator or executive vehicle not titled or titled by a manufacturer or a motor vehicle dealer. "Motor vehicle" does not mean a moped, semitrailer or trailer designed for use in combination with a truck or truck tractor.

(d) "Nonoriginal manufacturer replacement part" means a replacement part that is not made by or for the manufacturer of an insured's motor vehicle.

(e) "Replacement part" means a replacement for any of the nonmechanical sheet metal or plastic parts that generally constitute the exterior of a motor vehicle, including inner and outer panels.

(2) **NOTICE OF INTENDED USE.** An insurer or the insurer's representative may not require directly or indirectly the use of a nonoriginal manufacturer replacement part in the repair of an insured's motor vehicle, unless the insurer or the insurer's representative provides to the insured the notice described in this subsection in the manner required in sub. (3) or (4). The notice shall be in writing and shall include all of the following information:

(a) A clear identification of each nonoriginal manufacturer replacement part that is to be used in the repair of the insured's

insured's  
(b) The name of the replacement manufacturer of the replacement part of the motor vehicle

(3) The insurer or the insurer's representative shall prepare the notice of intended use or the insurer's representative shall prepare the notice of intended use

(b) If the insurer or the insurer's representative or the insurer's representative provides the notice of intended use to the insured

(c) The insurer or the insurer's representative shall provide the notice of intended use to the insured in sub. (2).

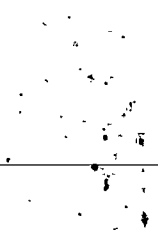
(d) Notwithstanding sub. (3), the insurer or the insurer's representative may provide the notice of intended use to the insured by telephone if the insured's representative agrees to be responsible for delivery of the replacement part.

(4) **NOTICE OF INTENDED USE BY TELEPHONE.** If the insurer or the insurer's representative provides the notice of intended use to the insured by telephone, the insurer or the insurer's representative shall send the written notice described in sub. (2) by mail to the insured's last-known address no later than 3 working days after the telephone contact.

History: 1991 a. 176.

*Who's responsible for providing authorization form -> Called w/ Q 1-7-99 (wants insurer to be responsible for delivery)*

*delete address anguo*





State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1591/

PJK.....

amy  
+  
jlg

PI

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

gen cut

1 AN ACT <sup>x</sup>; relating to: requiring authorization for the use of nonoriginal  
2 manufacturer replacement parts in the repair of a motor vehicle.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 632.38 <sup>x</sup>(2) (intro.) of the statutes is amended to read:  
4 632.38 (2) NOTICE OF INTENDED ~~AND~~ <sup>✓</sup>AUTHORIZATION FOR USE. (intro.) An insurer  
5 or the insurer's representative may not require directly or indirectly the use of a  
6 nonoriginal manufacturer replacement part in the repair of an insured's motor  
7 vehicle, unless the insurer or the insurer's representative provides to the insured the  
8 notice and authorization form described in this subsection in the manner required  
9 in sub. (3) ~~or~~ <sup>✓</sup>(4) and receives written authorization from the insured before any  
10 nonoriginal manufacturer replacement part is installed on the insured's motor

1 vehicle. The notice ~~shall be in writing and shall include all of~~ must be given, and  
2 authorization must be obtained, on a form that is entitled “Replacement Parts Notice  
3 and Authorization Form” and that includes only the following information:

4 History: 1991 a. 176.

4 **SECTION 2.** 632.38 (2) (a) of the statutes is amended to read:

5 632.38 (2) (a) A clear identification of each nonoriginal manufacturer  
6 replacement part that ~~is intended for use~~ will be used in the repair of the insured’s  
7 motor vehicle if the insured provides authorization for the part’s use.

8 History: 1991 a. 176.

8 **SECTION 3.** 632.38 (2) (b) of the statutes is repealed.

9 **SECTION 4.** 632.38 (2) (bm) of the statutes is created to read:

10 632.38 (2) (bm) A clear description, consistent with the definitions specified in  
11 sub. (1), of what a nonoriginal manufacturer replacement part is and how it differs  
12 from an original manufacturer replacement part.

13 **SECTION 5.** 632.38 (2) (c) of the statutes is created to read:

14 632.38 (2) (c) A statement that the insured may choose to have replacement  
15 parts made by or for the manufacturer of the insured’s motor vehicle used in the  
16 repair of the insured’s motor vehicle.

17 **SECTION 6.** 632.38 (2) (d) of the statutes is created to read:

18 632.38 (2) (d) A statement that the insurer’s obligation to cover repairs to the  
19 insured’s motor vehicle will not be affected by the insured’s choice under par. (c).

20 **SECTION 7.** 632.38 (2) (e) of the statutes is created to read:

21 632.38 (2) (e) Two signature lines for the insured’s signature, with one line  
22 designated as authorizing the use of nonoriginal manufacturer replacement parts in  
23 the repair and the other line designated as requiring the use of only original  
24 manufacturer replacement parts in the repair. In addition, the form shall allow the

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*to require the use of*

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insured to authorize the use of a nonoriginal manufacturer replacement part or an original manufacturer replacement part with respect to each replacement part to be used in the repair.

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**SECTION 8.** 632.38 (3) (title) of the statutes is amended to read:

5

632.38 (3) (title) DELIVERY OF NOTICE AND AUTHORIZATION FORM.

History: 1991 a. 176.

6

**SECTION 9.** 632.38 (3) (a) of the statutes is amended to read:

7

632.38 (3) (a) The notice and authorization form described in sub. (2) shall

8

~~appear on or~~ be attached to the estimate of the cost of repairing the insured's motor

9

vehicle if the estimate is based on the use of one or more nonoriginal manufacturer

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replacement parts and is prepared by the insurer or the insurer's representative.

11

The insurer or the insurer's representative shall deliver the estimate and notice and

12

authorization form to the insured before the motor vehicle is repaired.

History: 1991 a. 176.

13

**SECTION 10.** 632.38 (3) (b) of the statutes is amended to read:

14

632.38 (3) (b) If the insurer or the insurer's representative directs the insured

15

to obtain one or more estimates of the cost of repairing the insured's motor vehicle

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and the estimate approved by the insurer or the insurer's representative clearly

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identifies one or more nonoriginal manufacturer replacement parts to be used in the

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repair, the insurer or the insurer's representative shall ~~assure delivery of the notice~~

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~~described in sub. (2)~~ deliver the estimate approved by the insurer or the insurer's

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representative, with the notice and authorization form attached, to the insured

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before the motor vehicle is repaired.

History: 1991 a. 176.

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**SECTION 11.** 632.38 (3) (c) of the statutes is amended to read:



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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1591/2dn  
PJK.....

cmf  
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jlg

Rob:

1. I made this a preliminary draft because I thought that you would want to “fine tune” it.

2. As we discussed, the implication of the submitted language was that the repair shop would provide the notice and authorization form because the form was to be attached to the repair estimate and there was no language requiring the insurer to deliver the form to the insured. Because you wanted the insurer to be responsible for delivering the form, I have retained, with amendments, much more of current law than the proposed draft did. Section 632.38 (3) (a) addresses the situation in which the insurer or insurer’s representative prepares the estimate; s. 632.38 (3) (b) addresses the situation in which the insurer or insurer’s representative approves an estimate that the insured has obtained; and s. 632.38 (3) (c) prohibits the insurer or insurer’s representative from requiring the repair shop to deliver the notice and authorization form.

3. Under the proposed language, whether the form allowed the insured to choose some of each type of replacement part was optional with the insurer (at least that is how I interpreted the language). I required the form to allow the choice. Let me know if you want this changed.

4. Will it be necessary for repair shops to provide at least two estimates, one with the use of nonoriginal parts and one with the use of original parts? If the insured chooses some nonoriginal parts and some original parts, an estimate could be impossible to give beforehand. Section 632.38 (3) (b) could be problematic because the insurer may approve an estimate that is lower only because of the proposed use of nonoriginal parts. If the insured does not authorize the use of the nonoriginal parts, the estimate that was approved by the insurer, based on the use of nonoriginal parts, may actually be higher than estimates rejected by the insurer. Do you want to address this issue in this draft?

5. Do you want to provide a definition for “original manufacturer replacement part”? If so, the defined term would replace the description in s. 632.38 (2) (c).

Pamela J. Kahler  
Senior Legislative Attorney  
266-2682

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1591/P1dn  
PJK:cmh&jlg:jf

January 13, 1999

Rob:

1. I made this a preliminary draft because I thought that you would want to "fine tune" it.

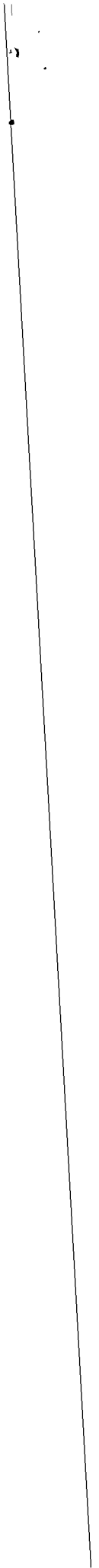
2. As we discussed, the implication of the submitted language was that the repair shop would provide the notice and authorization form because the form was to be attached to the repair estimate and there was no language requiring the insurer to deliver the form to the insured. Because you wanted the insurer to be responsible for delivering the form, I have retained, with amendments, much more of current law than the proposed draft did. Section 632.38 (3) (a) addresses the situation in which the insurer or insurer's representative prepares the estimate; s. 632.38 (3) (b) addresses the situation in which the insurer or insurer's representative approves an estimate that the insured has obtained; and s. 632.38 (3) (c) prohibits the insurer or insurer's representative from requiring the repair shop to deliver the notice and authorization form.

3. Under the proposed language, whether the form allowed the insured to choose some of each type of replacement part was optional with the insurer (at least that is how I interpreted the language). I required the form to allow the choice. Let me know if you want this changed.

4. Will it be necessary for repair shops to provide at least two estimates, one with the use of nonoriginal parts and one with the use of original parts? If the insured chooses some nonoriginal parts and some original parts, an estimate could be impossible to give beforehand. Section 632.38 (3) (b) could be problematic because the insurer may approve an estimate that is lower only because of the proposed use of nonoriginal parts. If the insured does not authorize the use of the nonoriginal parts, the estimate that was approved by the insurer, based on the use of nonoriginal parts, may actually be higher than estimates rejected by the insurer. Do you want to address this issue in this draft?

5. Do you want to provide a definition for "original manufacturer replacement part"? If so, the defined term would replace the description in s. 632.38 (2) (c).

Pamela J. Kahler  
Senior Legislative Attorney  
266-2682





Wisconsin Speaker Pro Tempore  
**Representative Stephen J. Freese**

MEMORANDUM

To: Pam Kahler, Senior Attorney  
From: Rob Richard, Administrative Assistant to Rep. Steve Freese  
Date: January 28, 1999  
Re: LRB-1591/P1, OEM parts legislation

---

I have looked over your drafter's note with my boss regarding the OEM parts legislation and he is still in the process of making a determination in response to all your questions.

For now, could you please simply do two things:

- Delete section 4 of LRB-1591/P1
- Amend 632.38 (1) (c) with the same language used in 1997 SSA 1 to SB 225, page 2, lines 8 and 9

I would appreciate it if you could send us a second preliminary draft as soon as you can.

Thanks Pam!

*Fifty-First Assembly District*

Office: Post Office Box 8952 • Madison, Wisconsin 53708-8952 • (608) 266-7502 • Fax: (608) 261-9474 • Rep.Freese@legis.state.wi.us  
District: 1121 Professional Drive • Dodgeville, Wisconsin 53533 • (608) 935-3789

Printed on recycled paper with soy-based ink





**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SOON  
(1-28)  
D-vote

refer cat.

1 **AN ACT to repeal** 632.38 (2) (b), 632.38 (3) (d) and 632.38 (4); **to amend** 632.38  
2 (2) (intro.), 632.38 (2) (a), 632.38 (3) (title), 632.38 (3) (a), 632.38 (3) (b) and  
3 632.38 (3) (c); and **to create** 632.38 (2) (bm), 632.38 (2) (c), 632.38 (2) (d) and  
4 632.38 (2) (e) of the statutes; **relating to:** requiring authorization for the use  
5 of nonoriginal manufacturer replacement parts in the repair of a motor vehicle.

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version.

✓  
Insert  
1-6

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

6 **SECTION 1.** 632.38 (2) (intro.) of the statutes is amended to read:  
7 **632.38 (2) NOTICE OF INTENDED AND AUTHORIZATION FOR USE.** (intro.) An insurer  
8 or the insurer's representative may not require directly or indirectly the use of a  
9 nonoriginal manufacturer replacement part in the repair of an insured's motor  
10 vehicle, unless the insurer or the insurer's representative provides to the insured the

1 notice and authorization form described in this subsection in the manner required  
2 in sub. (3) ~~or (4)~~ and receives written authorization from the insured before any  
3 nonoriginal manufacturer replacement part is installed on the insured's motor  
4 vehicle. The notice ~~shall be in writing and shall include all of~~ must be given, and  
5 authorization must be obtained, on a form that is entitled "Replacement Parts Notice  
6 and Authorization Form" and that includes only the following information:

7 **SECTION 2.** 632.38 (2) (a) of the statutes is amended to read:

8 632.38 (2) (a) A clear identification of each nonoriginal manufacturer  
9 replacement part that ~~is intended for use~~ will be used in the repair of the insured's  
10 motor vehicle if the insured provides authorization for the part's use.

11 **SECTION 3.** 632.38 (2) (b) of the statutes is repealed.

12 **SECTION 4.** 632.38 (2) (bm) of the statutes is created to read:

13 632.38 (2) (bm) A clear description, consistent with the definitions specified in  
14 sub. (1), of what a nonoriginal manufacturer replacement part is and how it differs  
15 from an original manufacturer replacement part.

16 **SECTION 5.** 632.38 (2) (c) of the statutes is created to read:

17 632.38 (2) (c) A statement that the insured may choose to have replacement  
18 parts made by or for the manufacturer of the insured's motor vehicle used in the  
19 repair of the insured's motor vehicle.

20 **SECTION 6.** 632.38 (2) (d) of the statutes is created to read:

21 632.38 (2) (d) A statement that the insurer's obligation to cover repairs to the  
22 insured's motor vehicle will not be affected by the insured's choice under par. (c).

23 **SECTION 7.** 632.38 (2) (e) of the statutes is created to read:

24 632.38 (2) (e) Two signature lines for the insured's signature, with one line  
25 designated as authorizing the use of nonoriginal manufacturer replacement parts in

1 the repair and the other line designated as requiring the use of only original  
2 manufacturer replacement parts in the repair. In addition, the form shall allow the  
3 insured to authorize the use of a nonoriginal manufacturer replacement part or to  
4 require the use of an original manufacturer replacement part with respect to each  
5 replacement part to be used in the repair.

6 **SECTION 8.** 632.38 (3) (title) of the statutes is amended to read:

7 632.38 (3) (title) DELIVERY OF NOTICE AND AUTHORIZATION FORM.

8 **SECTION 9.** 632.38 (3) (a) of the statutes is amended to read:

9 632.38 (3) (a) The notice and authorization form described in sub. (2) shall  
10 ~~appear on or~~ be attached to the estimate of the cost of repairing the insured's motor  
11 vehicle if the estimate is based on the use of one or more nonoriginal manufacturer  
12 replacement parts and is prepared by the insurer or the insurer's representative.  
13 The insurer or the insurer's representative shall deliver the estimate and notice and  
14 authorization form to the insured before the motor vehicle is repaired.

15 **SECTION 10.** 632.38 (3) (b) of the statutes is amended to read:

16 632.38 (3) (b) If the insurer or the insurer's representative directs the insured  
17 to obtain one or more estimates of the cost of repairing the insured's motor vehicle  
18 and the estimate approved by the insurer or the insurer's representative clearly  
19 identifies one or more nonoriginal manufacturer replacement parts to be used in the  
20 repair, the insurer or the insurer's representative shall ~~assure delivery of the notice~~  
21 ~~described in sub. (2)~~ deliver the estimate approved by the insurer or the insurer's  
22 representative, with the notice and authorization form attached, to the insured  
23 before the motor vehicle is repaired.

24 **SECTION 11.** 632.38 (3) (c) of the statutes is amended to read:



*Insert 1-6*

1 632.38 (1) (br) "Manufacturer" has the meaning given in s. 218.015 (1) (c).  
 2 SECTION 4. 632.38 (1) (br) of the statutes, as created by 1997 Wisconsin Act ...  
 3 (this act), is repealed.

4 SECTION 5. 632.38 (1) (c) of the statutes is amended to read:  
 5 632.38 (1) (c) "Motor vehicle" means any motor-driven vehicle required to be  
 6 registered under ch. 341 or exempt from registration under s. 341.05 (2), including  
 7 a demonstrator or executive vehicle not titled or titled by a manufacturer or a motor  
 8 vehicle dealer. "Motor vehicle" does not mean a moped, as defined in s. 340.01 (29m),  
 9 motorcycle, as defined in s. 340.01 (32), semitrailer or trailer designed for use in  
 10 combination with a truck or truck tractor.

11 SECTION 6. 632.38 (1) (c) of the statutes, as affected by 1997 Wisconsin Act ...  
 12 (this act), is repealed and recreated to read:

13 632.38 (1) (c) "Motor vehicle" means any motor-driven vehicle required to be  
 14 registered under ch. 341 or exempt from registration under s. 341.05 (2), including  
 15 a demonstrator or executive vehicle not titled or titled by a manufacturer or a motor  
 16 vehicle dealer. "Motor vehicle" does not mean a moped, semitrailer or trailer  
 17 designed for use in combination with a truck or truck tractor.

18 SECTION 7. 632.38 (1) (dm) of the statutes is created to read:

19 632.38 (1) (dm) "Original manufacturer replacement part" means a  
 20 replacement part that is made by or for the manufacturer of an insured's motor  
 21 vehicle.

22 SECTION 8. 632.38 (1) (dm) of the statutes, as created by 1997 Wisconsin Act  
 23 .... (this act), is repealed.

24 SECTION 9. 632.38 (2) (title) of the statutes is amended to read:

*(end of ins. 1-6)*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1591/P2dn  
PJK:cmh&jlg:hmh

Friday, January 29, 1999

This redraft still does not include an analysis so that I could get it out to you faster than otherwise and because you requested another preliminary version.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us



*r m is run*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION.**

*regenerate* ↓

1 **AN ACT to repeal** 632.38 (2) (b), 632.38 (3) (d) and 632.38 (4); **to amend** 632.38  
2 (1) (c), 632.38 (2) (intro.), 632.38 (2) (a), 632.38 (3) (title), 632.38 (3) (a), 632.38  
3 (3) (b) and 632.38 (3) (c); and **to create** 632.38 (2) (c), 632.38 (2) (d) and 632.38  
4 (2) (e) of the statutes; **relating to:** requiring authorization for the use of  
5 nonoriginal manufacturer replacement parts in the repair of a motor vehicle.

***Analysis by the Legislative Reference Bureau***

~~This is a preliminary draft. An analysis will be provided in a later version.~~

✓  
Insert  
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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

6 **SECTION 1.** 632.38 (1) (c) of the statutes is amended to read:  
7 632.38 (1) (c) "Motor vehicle" means any motor-driven vehicle required to be  
8 registered under ch. 341 or exempt from registration under s. 341.05 (2), including  
9 a demonstrator or executive vehicle not titled or titled by a manufacturer or a motor  
10 vehicle dealer. "Motor vehicle" does not mean a moped, as defined in s. 340.01 (29m).

1 motorcycle, as defined in s. 340.01 (32), semitrailer or trailer designed for use in  
2 combination with a truck or truck tractor.

3 **SECTION 2.** 632.38 (2) (intro.) of the statutes is amended to read:

4 632.38 (2) ~~NOTICE OF INTENDED~~ AND AUTHORIZATION FOR USE. (intro.) An insurer  
5 or the insurer's representative may not require directly or indirectly the use of a  
6 nonoriginal manufacturer replacement part in the repair of an insured's motor  
7 vehicle, unless the insurer or the insurer's representative provides to the insured the  
8 notice and authorization form described in this subsection in the manner required  
9 in sub. (3) ~~or (4)~~ and receives written authorization from the insured before any  
10 nonoriginal manufacturer replacement part is installed on the insured's motor  
11 vehicle. The notice ~~shall be in writing and shall include all of~~ must be given, and  
12 authorization must be obtained, on a form that is entitled "Replacement Parts Notice  
13 and Authorization Form" and that includes only the following information:

14 **SECTION 3.** 632.38 (2) (a) of the statutes is amended to read:

15 632.38 (2) (a) A clear identification of each nonoriginal manufacturer  
16 replacement part that ~~is intended for use~~ will be used in the repair of the insured's  
17 motor vehicle if the insured provides authorization for the part's use.

18 **SECTION 4.** 632.38 (2) (b) of the statutes is repealed.

19 **SECTION 5.** 632.38 (2) (c) of the statutes is created to read:

20 632.38 (2) (c) A statement that the insured may choose to have replacement  
21 parts made by or for the manufacturer of the insured's motor vehicle used in the  
22 repair of the insured's motor vehicle.

23 **SECTION 6.** 632.38 (2) (d) of the statutes is created to read:

24 632.38 (2) (d) A statement that the insurer's obligation to cover repairs to the  
25 insured's motor vehicle will not be affected by the insured's choice under par. (c).



1           **SECTION 7.** 632.38 (2) (e) of the statutes is created to read:

2           632.38 (2) (e) Two signature lines for the insured's signature, with one line  
3 designated as authorizing the use of nonoriginal manufacturer replacement parts in  
4 the repair and the other line designated as requiring the use of only original  
5 manufacturer replacement parts in the repair. In addition, the form shall allow the  
6 insured to authorize the use of a nonoriginal manufacturer replacement part or to  
7 require the use of an original manufacturer replacement part with respect to each  
8 replacement part to be used in the repair.

9           **SECTION 8.** 632.38 (3) (title) of the statutes is amended to read:

10          632.38 (3) (title) DELIVERY OF NOTICE AND AUTHORIZATION FORM.

11          **SECTION 9.** 632.38 (3) (a) of the statutes is amended to read:

12          632.38 (3) (a) The notice and authorization form described in sub. (2) shall  
13 ~~appear on or~~ be attached to the estimate of the cost of repairing the insured's motor  
14 vehicle if the estimate is based on the use of one or more nonoriginal manufacturer  
15 replacement parts and is prepared by the insurer or the insurer's representative.  
16 The insurer or the insurer's representative shall deliver the estimate and notice and  
17 authorization form to the insured before the motor vehicle is repaired.

18          **SECTION 10.** 632.38 (3) (b) of the statutes is amended to read:

19          632.38 (3) (b) If the insurer or the insurer's representative directs the insured  
20 to obtain one or more estimates of the cost of repairing the insured's motor vehicle  
21 and the estimate approved by the insurer or the insurer's representative clearly  
22 identifies one or more nonoriginal manufacturer replacement parts to be used in the  
23 repair, the insurer or the insurer's representative shall ~~assure delivery of the notice~~  
24 ~~described in sub. (2)~~ deliver the estimate approved by the insurer or the insurer's

*change component*

1 representative, with the notice and authorization form attached, to the insured  
2 before the motor vehicle is repaired.

*repealed.*

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**SECTION 11.** 632.38 (3) (c) of the statutes is ~~amended to read,~~

4 632.38 (3) (c) The insurer or the insurer's representative may not require the  
5 person repairing the motor vehicle to ~~give~~ provide the notice and authorization form  
6 described in sub. (2).

7 **SECTION 12.** 632.38 (3) (d) of the statutes is repealed.

8 **SECTION 13.** 632.38 (4) of the statutes is repealed.

9 **SECTION 14. Initial applicability.**

10 (1) This act first applies to claims under motor vehicle insurance policies issued  
11 or renewed on the effective date of this subsection.

12 **SECTION 15. Effective date.**

13 (1) This act takes effect on the first day of the 6th month beginning after  
14 publication.

15 (END)

INSERT A

Under current law, an insurer may not use nonoriginal manufacturer replacement parts in the repair of an insured's motor vehicle unless the insurer complies with specific notice requirements. (Nonoriginal manufacturer replacement parts are nonmechanical sheet metal or plastic parts for the repair of the exterior of a motor vehicle that are not made by or for the manufacturer of the insured's motor vehicle.) The notice must clearly identify the replacement parts as nonoriginal manufacturer replacement parts and advise the insured that warranties on the parts are provided by the manufacturer of the parts, not the manufacturer of the insured's motor vehicle. The notice must be on or attached to any repair estimate that is based on the use of one or more nonoriginal manufacturer replacement parts. If the insured has obtained one or more estimates and the insurer approves an estimate that is based on the use of one or more nonoriginal manufacturer replacement parts, the insurer must make sure that the insured receives the notice before the motor vehicle is repaired. The insurer may give the notice by telephone after ~~the~~ repairs have begun if the insured authorizes repairs to begin before the insurer approves the estimate. The insurer may not require the person repairing the vehicle to give the notice.

This bill changes the requirements that apply in order for an insurer to require the use of nonoriginal manufacturer replacement parts in the repair of an insured's motor vehicle. An insurer must provide an insured with a notice and authorization form. The notice must clearly identify any nonoriginal manufacturer replacement parts that will be used in the repair, if the insured authorizes the use. The notice must also explain that the insured may choose to have replacement parts made by or for the manufacturer of the insured's vehicle used in the repair and that the insurer's obligation to cover the repair is not affected by the type of replacement parts that the insured chooses. The authorization part of the form must allow the insured to choose either a nonoriginal or original manufacturer replacement part for each replacement part that will be used in the repair. The insurer may require the use of a nonoriginal manufacturer replacement part only if so authorized by the insured.

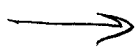
The notice and authorization form must be attached to the repair estimate or delivered before repairs begin if the insurer approves an estimate obtained by the insured. The bill removes the ~~specific~~ authority to provide the notice by telephone and removes the prohibition against an insurer requiring the person repairing the vehicle to give the notice.

The provisions in current law do not apply to mopeds, semitrailers or trailers designed for use in combination with a truck or truck tractor. The bill provides that the provisions do not apply to motorcycles, either.

(END OF INSERT A)

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**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU**  
**Legal Section Telephone: 266-3561**  
**5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

**Date:** 2/4/99

**To:** Representative Freese

**Relating to LRB drafting number:** LRB-1591

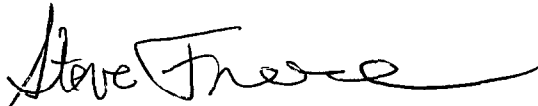
**Topic**

Insurers' responsibilities with respect to the use of original manufacturer replacement parts

**Subject(s)**

Insurance - auto

1. **JACKET** the draft for introduction



in the **Senate** \_\_\_\_\_ or the **Assembly**  (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Pamela J. Kahler, Senior Legislative Attorney  
Telephone: (608) 266-2682



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3



*in is new*

# 1999 BILL

*today  
(Wed)  
pp 4 & 5  
D - note*

*repeal cat.*

1 AN ACT *to repeal* 632.38 (2) (b), 632.38 (3) (c), 632.38 (3) (d) and 632.38 (4); *to*

2 *amend* 632.38 (1) (c), 632.38 (2) (intro.), 632.38 (2) (a), 632.38 (3) (title), 632.38

3 (3) (a) and 632.38 (3) (b); and *to create* 632.38 (2) (c), 632.38 (2) (d) and 632.38

4 (2) (e) of the statutes; **relating to:** requiring authorization for the use of

5 nonoriginal manufacturer replacement parts in the repair of a motor vehicle.

### ***Analysis by the Legislative Reference Bureau***

Under current law, an insurer may not use nonoriginal manufacturer replacement parts in the repair of an insured's motor vehicle unless the insurer complies with specific notice requirements. (Nonoriginal manufacturer replacement parts are nonmechanical sheet metal or plastic parts for the repair of the exterior of a motor vehicle that are not made by or for the manufacturer of the insured's motor vehicle.) The notice must clearly identify the replacement parts as nonoriginal manufacturer replacement parts and advise the insured that warranties on the parts are provided by the manufacturer of the parts, not the manufacturer of the insured's motor vehicle. The notice must be on or attached to any repair estimate prepared by the insurer that is based on the use of one or more nonoriginal manufacturer replacement parts. If the insured has obtained one or more estimates and the insurer approves an estimate that is based on the use of one or more nonoriginal manufacturer replacement parts, the insurer must make sure that the insured receives the notice before the motor vehicle is repaired. The insurer may give the notice by telephone after repairs have begun if the insured authorizes repairs to

**BILL**

begin before the insurer approves the estimate. The insurer may not require the person repairing the vehicle to give the notice.

This bill changes the requirements that apply in order for an insurer to require the use of nonoriginal manufacturer replacement parts in the repair of an insured's motor vehicle. An insurer must provide an insured with a notice and authorization form. The notice must clearly identify any nonoriginal manufacturer replacement parts that will be used in the repair, if the insured authorizes the use. The notice must also explain that the insured may choose to have replacement parts made by or for the manufacturer of the insured's vehicle used in the repair and that the insurer's obligation to cover the repair is not affected by the type of replacement parts that the insured chooses. The authorization part of the form must allow the insured to choose either a nonoriginal or original manufacturer replacement part for each replacement part that will be used in the repair. The insurer may require the use of a nonoriginal manufacturer replacement part only if so authorized on the form by the insured. The notice and authorization form must be attached to a repair estimate prepared by the insurer or delivered before repairs begin if the insurer approves an estimate obtained by the insured. The bill removes the authority to provide the notice by telephone and removes the prohibition against an insurer requiring the person repairing the vehicle to give the notice.

The provisions in current law do not apply to mopeds, semitrailers or trailers designed for use in combination with a truck or truck tractor. The bill provides that the provisions do not apply to motorcycles, either.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 632.38 (1) (c) of the statutes is amended to read:

2           632.38 (1) (c) "Motor vehicle" means any motor-driven vehicle required to be  
3 registered under ch. 341 or exempt from registration under s. 341.05 (2), including  
4 a demonstrator or executive vehicle not titled or titled by a manufacturer or a motor  
5 vehicle dealer. "Motor vehicle" does not mean a moped, as defined in s. 340.01 (29m),  
6 motorcycle, as defined in s. 340.01 (32), semitrailer or trailer designed for use in  
7 combination with a truck or truck tractor.

8           **SECTION 2.** 632.38 (2) (intro.) of the statutes is amended to read:

9           632.38 (2) ~~NOTICE OF INTENDED~~ AND AUTHORIZATION FOR USE. (intro.) An insurer  
10 or the insurer's representative may not require directly or indirectly the use of a



**BILL**

1 nonoriginal manufacturer replacement part in the repair of an insured's motor  
2 vehicle, unless the insurer or the insurer's representative provides to the insured the  
3 notice and authorization form described in this subsection in the manner required  
4 in sub. (3) ~~or (4)~~ and receives written authorization from the insured before any  
5 nonoriginal manufacturer replacement part is installed on the insured's motor  
6 vehicle. The notice shall be in writing and shall include all of must be given, and  
7 authorization must be obtained, on a form that is entitled "Replacement Parts Notice  
8 and Authorization Form" and that includes only the following information:

9 **SECTION 3.** 632.38 (2) (a) of the statutes is amended to read:

10 632.38 (2) (a) A clear identification of each nonoriginal manufacturer  
11 replacement part that ~~is intended for use~~ will be used in the repair of the insured's  
12 motor vehicle if the insured provides authorization for the part's use.

13 **SECTION 4.** 632.38 (2) (b) of the statutes is repealed.

14 **SECTION 5.** 632.38 (2) (c) of the statutes is created to read:

15 632.38 (2) (c) A statement that the insured may choose to have replacement  
16 parts made by or for the manufacturer of the insured's motor vehicle used in the  
17 repair of the insured's motor vehicle.

18 **SECTION 6.** 632.38 (2) (d) of the statutes is created to read:

19 632.38 (2) (d) A statement that the insurer's obligation to cover repairs to the  
20 insured's motor vehicle will not be affected by the insured's choice under par. (c).

21 **SECTION 7.** 632.38 (2) (e) of the statutes is created to read:

22 632.38 (2) (e) Two signature lines for the insured's signature, with one line  
23 designated as authorizing the use of nonoriginal manufacturer replacement parts in  
24 the repair and the other line designated as requiring the use of only original  
25 manufacturer replacement parts in the repair. In addition, the form shall allow the

**BILL**

1 insured to authorize the use of a nonoriginal manufacturer replacement part or to  
2 require the use of an original manufacturer replacement part with respect to each  
3 replacement part to be used in the repair.

4 **SECTION 8.** 632.38 (3) (title) of the statutes is amended to read:

5 632.38 (3) (title) DELIVERY OF NOTICE AND AUTHORIZATION FORM.

6 **SECTION 9.** 632.38 (3) (a) of the statutes is amended to read:

7 632.38 (3) (a) The notice and authorization form described in sub. (2) shall  
8 ~~appear on or~~ be attached to the estimate of the cost of repairing the insured's motor  
9 vehicle if the estimate is based on the use of one or more nonoriginal manufacturer  
10 replacement parts and is prepared by the insurer or the insurer's representative.  
11 The insurer or the insurer's representative shall deliver the estimate and notice and  
12 authorization form to the insured before the motor vehicle is repaired.

13 **SECTION 10.** 632.38 (3) (b) of the statutes is amended to read:

14 632.38 (3) (b) If the insurer or the insurer's representative directs the insured  
15 to obtain one or more estimates of the cost of repairing the insured's motor vehicle  
16 and the estimate approved by the insurer or the insurer's representative clearly  
17 identifies one or more nonoriginal manufacturer replacement parts to be used in the  
18 repair, the insurer or the insurer's representative shall ~~assure delivery of the notice~~  
19 described in sub. (2) deliver the estimate approved by the insurer or the insurer's  
20 representative, with the notice and authorization form attached, to the insured  
21 before the motor vehicle is repaired.

22 **SECTION 11.** 632.38 (3) (c) of the statutes is repealed.

23 **SECTION 12.** 632.38 (3) (d) of the statutes is repealed.

24 **SECTION 13.** 632.38 (4) of the statutes is repealed.

25 **SECTION 14. Initial applicability.**

**BILL**

1 (1) This act first applies to claims under motor vehicle insurance policies issued  
2 or renewed on the effective date of this subsection.

3 **SECTION 15. Effective date.**

4 (1) This act takes effect on the first day of the 6th month beginning after  
5 publication.

6 (END)

*D. vote*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2124/2dn  
PJK:cmh&jlg:km

cmh + jlg

Note  
for  
foder no.

Please note that, as we discussed, if a motor vehicle insurance policy that is in effect when the law takes effect includes a provision that is in conflict with the provisions in this bill, the provisions may be held by a court to be an unconstitutional impairment of contract, at least with respect to that policy. This potential problem was the reason an initial applicability provision was included in the previous versions. It is entirely possible that no policy currently contains, or will contain at the time that the bill goes into effect, a provision that is in conflict with the bill.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1591/2dn  
PJK:cmh&jlg:lp

February 10, 1999

Please note that, as we discussed, if a motor vehicle insurance policy that is in effect when the law takes effect includes a provision that is in conflict with the provisions in this bill, the provisions may be held by a court to be an unconstitutional impairment of contract, at least with respect to that policy. This potential problem was the reason an initial applicability provision was included in the previous versions. It is entirely possible that no policy currently contains, or will contain at the time that the bill goes into effect, a provision that is in conflict with the bill.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us

ASSISTANT



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# 1999 ASSEMBLY BILL

*Monday  
pp 4 & 5  
D-note*

*Regen*

1     **AN ACT to repeal** 632.38 (2) (b), 632.38 (3) (c), 632.38 (3) (d) and 632.38 (4); **to**  
2             **amend** 632.38 (1) (c), 632.38 (2) (intro.), 632.38 (2) (a), 632.38 (3) (title), 632.38  
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**ASSEMBLY BILL**

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**ASSEMBLY BILL**

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22 SECTION 11. 632.38 (3) (c) of the statutes is repealed.

23 SECTION 12. 632.38 (3) (d) of the statutes is repealed.

24 SECTION 13. 632.38 (4) of the statutes is repealed.

25 SECTION 14. Effective date.

Insert 4-24 ✓

ASSEMBLY BILL

3rd ✓  
↑  
A

1  
2  
3

(1) This act takes effect on the first day of the 3<sup>rd</sup> month beginning after publication.

(END)

D-note

¶ This redraft adds ~~back~~ the initial applicability provision back in and ~~changes~~ changes the effective date to a 3<sup>rd</sup> month delay. FJk



BILL

*Ins. 4-24*

1 insured to authorize the use of a nonoriginal manufacturer replacement part or to  
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18 repair, the insurer or the insurer's representative shall ~~assure delivery of the notice~~  
19 ~~described in sub. (2)~~ deliver the estimate approved by the insurer or the insurer's  
20 representative, with the notice and authorization form attached, to the insured  
21 before the motor vehicle is repaired.

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23 SECTION 12. 632.38 (3) (d) of the statutes is repealed.

24 SECTION 13. 632.38 (4) of the statutes is repealed.

25 SECTION 14. Initial applicability.



**BILL**

*ins 4-24 contd*

1 (1) This act first applies to claims under motor vehicle insurance policies issued  
2 or renewed on the effective date of this subsection.

3 **SECTION 15. Effective date.**

4 (1) This act takes effect on the first day of the 6th month beginning after  
5 publication.

6

(END) *ins 4-24)*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1591/3dn  
PJK:cmh&jlg:km

February 15, 1999

This redraft adds the initial applicability provision back in and changes the effective date to a 3-month delay.

Pamela J. Kahler  
Senior Legislative Attorney  
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E-mail: Pam.Kahler@legis.state.wi.us