

1999 DRAFTING REQUEST

Bill

Received: **02/4/99**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB:

For: **Richard Grobschmidt (608) 266-7505**

By/Representing: **John Sumi**

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:

Notice and authorization for use of nonoriginal 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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/1			martykr 02/5/99	_____	lrb_docadmin 02/5/99		
				_____	lrb_docadmin 02/5/99		
/2	kahlepj 02/10/99	chanaman 02/10/99	jfrantze 02/10/99	_____	lrb_docadmin 02/10/99		
/3	kahlepj 02/12/99	jgeller 02/14/99	jfrantze 02/15/99	_____	lrb_docadmin 02/15/99	lrb_docadmin 02/16/99	

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Vers. Drafted Reviewed Typist Proofed Submitted Jacketed Required

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1?	kahlepj	CMM 1 2/2	Km 2/4	JS Km/s			
FE Sent For:		1 2/4 JG					

<END>

for Gubschmidt (semi)

do a Senate companion to 99-1591

(replacement part)



State of Wisconsin
1999 - 2000 LEGISLATURE

2124/1
LRB-15914-1
PJK:pmh&jlg:km
stays

1999 BILL

D. note
(no changes)

regen 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 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-note

¶ Because I am ^{not} sure that this is
the ^{version} version that will be introduced in
the Assembly, you will want to be in
touch with the Assembly requester to
make sure that ~~the version~~ is actually

the ^{version} version is based on LRB-1591/1. (This
companion bill.)
PJK

the ^{version} version of this bill that
you introduce

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

LRB-2124/1dn
PJK:cmh&jlg:km

February 4, 1999

Because I am not sure that this is the version that will be introduced in the Assembly, you will want to be in touch with the Assembly requester to make sure that the version of this bill that you introduce is actually the Senate companion bill. (This version is based on LRB-1591/1).

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



State of Wisconsin
1999 - 2000 LEGISLATURE

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

revision

1999 BILL

today
(wed)
pp 4-5
D-note

regen cat -

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

1 ~~(1) This act first applies to claims under motor vehicle insurance policies issued~~
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6 (END)

D. note

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

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

cmh
+
jlg

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

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

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E-mail: Pam.Kahler@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2124/3
PJK:cmh&jlg:jf

r m is run

1999 BILL

Morgan
pp 4 & 5
D-note

Regen

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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

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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. Effective date.**

Insert 4-24

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3rd ✓

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

3 (END)

D-note

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

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Enst 4-24

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.

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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.**



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Ens. 4-24 cont'd

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) of ins 4-24)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2124/3dn
PJK:cmh&jlg:jf

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
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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: 2/15/99

To: Senator Grobschmidt

Relating to LRB drafting number: LRB-2124

Topic

Notice and authorization for use of nonoriginal manufacturer replacement parts

Subject(s)

Insurance - auto

1. **JACKET** the draft for introduction _____

Richard Grobschmidt

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