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PROPER PARTS, PROTECTED CONSUMERS: ABAT BILLS MAKE WAVES IN AUSTIN

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SAFE PARTS, SAFE PROCEDURES: HB 1131 GETS HEARD IN AUSTIN

In today's collision repair industry, proper parts and procedures should never be a debate. Auto manufacturers state what needs to be done and used, and repairers are responsible for following these recommendations and requirements to ensure occupant safety. Unfortunately, insurers have historically pressured facilities to pursue less expensive – and arguably less safe – options to get a damaged vehicle back on the road. This long-running tug of war played out at a recent hearing in Austin on legislation that could change the battlefield forever.

Sponsored by Representative Travis Clardy (R-Nacogdoches) and endorsed by ABAT, House Bill 1131 aims to (among other things) establish that Texas automotive insurers may not specify the use of a “like kind and quality” part unless the insurer and the part's manufacturer can conclusively demonstrate that it 1. Meets the fit, finish and quality criteria established for the part or product by the original equipment manufacturer of the part or product; 2. Is the same weight and metal hardness established for the part or product by the original equipment manufacturer of the part or product; and 3. Has been tested using the same crash and safety test criteria used by the original equipment manufacturer of the part or product.

Marcia Seebachan, one of the plaintiffs in the landmark 2017 multimillion-dollar lawsuit against John Eagle Collision Center (Dallas), was among those who appeared before the Texas House Committee on Insurance to testify in support of this effort.

Seebachan, who (along with her husband, Matthew) suffered life-threatening injuries when their improperly repaired Honda Fit was involved in a subsequent collision, told the Committee that she “strongly” supported the bill.

“When we allow people to make changes that are going to impact the structural integrity of these vehicles, it undermines the process [...] The only way to prove that those repairs are sufficient is through adequate testing that shows that they are.”

A licensed clinical social worker, she compared the stringent guidelines she must follow in her occupation to those of the auto body community.

“I'm not allowed to go practicing, in the State of Texas as a social worker, with techniques on my clients that are not tested, reliable and valid [...] I can't imagine making a choice in my profession that affects the life, health and safety of others based on what I have deemed to be good enough. I would never do that – and [insurers] shouldn't be allowed to either when people are at risk.”

Kevin Fisk, a representative from LKQ Corporation, testified

in opposition to the bill, arguing that manufacturers of non-OEM parts would face obstacles in developing products that meet the guidelines outlined in the legislation's language.

“There are criteria set for auto parts that no [aftermarket] part manufacturer could meet, simply because the OEMs are not going to give their specs or standards for what that might be. They would never provide that information to competitors. We feel that this bill would stifle healthy competition, increase the cost of repair for the vehicle and eliminate consumer choice on what types of parts could be used to repair the vehicle.”

Dallas-based attorney Todd Tracy, who served as lead counsel for the Seebachans in their case against John Eagle Collision Center, made it clear in his testimony that he didn't buy Fisk's reasoning behind LKQ's refusal to support the legislation.

“The gentleman from LKQ noted, ‘Well, we don't know what the OEM parts are made of, because we can't replicate [them].’ Engineering 101 tells us that you can reverse-engineer anything. You can go buy a Hyundai, a Kia and a Chevrolet; you can tear it down and reverse-engineer it, and they can tell you exactly what the material's made of. It'll take you a weekend. For them to sit there and say they can't replicate what the OEM is doing is disingenuous.”

Additionally, Tracy stressed the importance of repairers strictly adhering to how the OEMs say a repair should be conducted.

“Crashworthiness is really simple; it's the science of preventing or minimizing serious injuries or death following an accident through the use of the vehicle's safety systems. When vehicle repair facilities don't follow OEM repair guidelines and/or don't use OEM-approved parts, the repair shop suffers and their insurance companies suffer – because lawyers like me come after them, and we hit them for tens of millions of dollars in verdicts.

“The men and women who put our vehicles back together again in the right way are heroes,” he added. “This bill will protect Texas repair facilities – if they follow OEM repair guidelines and if they use OEM repair parts.”

The American Property Casualty Insurance Association, the Texas Coalition of Affordable Insurance Solutions and the National Association of Mutual Insurance Companies joined LKQ in providing opposing testimony on House Bill 1131. The Committee was largely critical of this testimony, often grilling the insurance industry representatives on everything from the quality of parts to the disclosures offered to consumers on their use. As just one example, Beaman Floyd of the Texas Coalition

of Affordable Insurance Solutions offered comments that mostly highlighted the market benefits of non-OEM parts.

“We think that the use of alternative parts is important. We know that there is good price competition in the use of alternative parts [...] Right now, we have situations that I think are very telling where some of the original manufacturers are actually dropping the prices and competing with the price of aftermarket parts. They have programs that go in and try to compete at that price point with aftermarket parts. We think that’s quite healthy.

“Safety is absolutely critical, but I think it’s important to recognize that there are several good paths to safety,” he added. “If we can do it in a way that’s economically efficient and keeps rates down, we think we need to still be able to do that.”

Floyd also argued that market-driven competition ultimately benefits consumers.

“You have a lot of choice as a consumer about how you get your car repaired, but we are also trying to meet efficiency points and price points, frankly, that keep costs under control and help us ensure, one, that there is competition. Any part manufacturer and body shop is in the marketplace competing in a fair way to keep costs down [...] The idea of cost control in that space is not antithetical to quality, we don’t think. We just don’t want to create, essentially, a monopoly for parts or particular shops. We think it’s healthy for everybody – and for the price point of insurance – to have some competition in auto repair.”

Floyd’s comments were not well received by Committee member Celia Israel (D-District 50), who cautioned him not to use terms like “efficiencies” when discussing the “human tragedy” of an automobile accident.

“There’s a disconnect between the industry and what people are experiencing, whether it’s health insurance or coverage with their automobile [...] Using the word ‘efficiencies’ is a reason why people don’t like insurance companies. You’re looking at the book – ‘Here’s our bottom line, and the consumer has choice.’ You’re offloading. I don’t know what the answer is, but it seems to me like there’s a better way.”

Representing ABAT as well as himself, Chad Kiffe (Berli’s Body & Fine Auto Finishes) spoke of his experiences as the general manager at an OEM-certified facility that regularly struggles with insurers over proper repair procedures.

“House Bill 1131 is a consumer-safety bill; this is to help protect consumers by getting properly repaired vehicles. I’m a general manager of a body shop here in Austin, TX; I have firsthand knowledge of what we go through on repairs and how insurance companies dictate to us how to fix a vehicle. It is extremely difficult to run a business when you have the insurance company trying to tell you how to fix a vehicle, what parts to use and where to buy the parts.”

Ware Wendell, executive director of the citizen advocacy organization Texas Watch, offered public support of House Bill

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1131 while noting that it is not designed to remove aftermarket parts from the picture– so long as they meet the same standards as OEM products.

“All this bill does is say, ‘Please follow the manufacturer’s recommendations.’ It does not require OEM parts [...] They just have to actually be like kind and quality in terms of fit, finish, weight, strength, etc. They have to be proven parts – that’s it.”

Addressing his House colleagues, Representative Clardy urged their support for a bill that is desperately needed in today’s shop-insurer landscape.

“The days of the shadetree mechanic are long gone, particularly when it comes to the safety components of these vehicles [...] This is more than just a ‘parts’ bill; this is more about the process and the procedures.

“Automobile insurance is a very expensive product,” he added. “Likewise, for most people in Texas, their automobile is [...] one of the largest investments they make with their funds. So, this hits people in the pocketbook but also can hit them very much in the real world in which they live if repairs aren’t made safely and properly.”

ABAT President Burl Richards tells *Texas Automotive* that he is encouraged by the strong testimony in favor of the bill and the pushback given to the opposition.

“It’s clear that the Committee members were informed on our industry’s issues and why it is so important for consumers that this bill gets passed. I commend our lobbyist, Jacob Smith, and Ware Wendell at Texas Watch for doing their part in getting our message heard by those who can make a difference. I also thank the members of ABAT, especially Chad Kiffe, for their ongoing efforts to draw attention to this very important cause.”

As the Texas Legislature moves forward with perhaps its busiest legislation session ever, lawmakers will be tasked with doing the right thing and giving their full support to this critical and potentially history-making bill. Perhaps the most succinct way to sum up why House Bill 1131 matters is to share these words from Wendell’s testimony:

“We support this bill because safe repairs save lives.”

Texas Automotive *strongly urges readers to view the entire video of the hearing on House Bill 1131 at bit.ly/3sC6Kp7 for further perspectives from both sides of the matter. The discussion begins at 3:20:32.* **TXA**