



January 27, 2023

The Honorable Senator Barry DeKay  
Nebraska State Capitol  
Room 11<sup>th</sup> Floor  
P.O. Box 94604  
Lincoln, NE 68509

**Re: Nebraska Legislative Bill 782 – Change Provisions Relating to Salvage Branded Certificates of Title and Consumer Care of Motor Vehicles**

Dear Senator DeKay,

The Automotive Recyclers Association (ARA) appreciates the opportunity to submit comments on Legislative Bill 782 (LB 782), which is a bill changing provisions relating to salvage branded certificates of title and consumer care of motor vehicles (vehicles). ARA, and its eighteen members located across Nebraska, strongly oppose LB 782. ARA recommends that the Transportation and Telecommunications Committee act to indefinitely postpone LB 782.

LB 782 is contrary to the public interest as it seeks to modify existing law pertaining to salvage vehicle designations and creates an obligation on entities performing maintenance and repair on vehicles to follow original equipment manufacturer (OEM) procedures. ARA opposes LB 782 for the following reasons: (1) mandating that vehicle repairers follow OEM procedures will grant OEMs a monopoly over replacement vehicle parts; (2) vehicle owners will be forced to pay more to repair their vehicles because of the elimination of a fair and competitive replacement parts market; (3) more vehicles involved in collisions will be declared a total loss due to artificially inflated repair costs; (4) a lack of availability of replacement parts will place an artificial expiration date on vehicles; and (5) may unreasonably cause more total loss vehicles on the basis of a new definition for structurally totaled vehicles.

**I. LB 782 mandates that motor vehicle repairers follow OEM procedures, which will grant OEMs a monopoly over replacement vehicle parts.**

Over the last several years, legislative proposals mandating motor vehicle repairers to follow OEM procedures have been used to restrict vehicle owners' ability to choose the type of motor vehicle parts used in repairs. OEMs' position statements and procedures consistently require only new OEM parts to be used as replacement parts. Subaru of America Inc., Ford Motor Company, and FCA US LLC all have existing position statements prohibiting the use of recycled OEM and aftermarket replacement parts. Therefore, LB 782's requirement that repairers follow OEM procedures would unreasonably prohibit, or at the very least give OEMs the ability to unreasonably prohibit, the use of recycled OEM parts as vehicle replacement parts. This would unfairly give

new OEM parts a larger share of the replacement parts market that is estimated to be worth \$500 billion.<sup>1</sup>

On August 2021, Subaru of America, Inc. (Subaru) issued a position statement, *Use of Aftermarket Substitute Parts on Subaru Vehicles*.<sup>2</sup> The position statement explicitly states that, “Subaru of America, Inc. does NOT approve of the use of recycled, salvaged, aftermarket, or recondition parts that may not be manufactured to the same specifications or tolerances as Subaru Genuine Parts.”<sup>3</sup> This policy statement issued to motor vehicle repairers is an official statement discouraging and restricting the use of recycled OEM and aftermarket replacement parts. Subaru’s position statement is also in contradiction with itself because it prohibits the use of recycled and salvaged parts, which are OEM parts that are manufactured by the OEM itself, and were installed by the OEM during the vehicle assembly process and by definition were manufactured to the same specifications and tolerances as Subaru Genuine Parts. The primary difference between recycled OEM parts and Subaru Genuine Parts is that recycled OEM parts are coming from a source other than the OEM.

On May 2022, Ford Motor Company (Ford) issued a collision position statement, *Use of Non-OEM and Salvage Parts on Ford Motor Company Vehicles*.<sup>4</sup> The position statement, like Subaru’s policy, states that, “The original parts used on Ford Motor Company vehicles are designed and built to provide enhanced fit, function, safety, and structural integrity. For this reason, Ford does not approve the use of recycled, salvaged, aftermarket or reconditioned parts...Recycled, salvaged, aftermarket and reconditioned parts (including body parts, wheels and safety restraint components) are not authorized by Ford”<sup>5</sup> Ford, like Subaru, has an existing official position telling motor vehicle repairers that it is against OEM policy to use recycled original equipment parts in repairs. Ford also makes the same weak argument that Subaru makes by attempting to claim that recycled original equipment sold by automotive recyclers is not designed or built by the OEMs or meets OEM specifications. This is despite the fact that recycled OEM parts are OEM parts and were designed and manufactured by the OEM. Ford is prohibiting the use of any replacement vehicle parts except for newly manufactured OEM parts.

Finally, in 2019, FCA US LLC (FCA) has an official position statement entitled, *Use of Aftermarket Parts*, that discourages the use of recycled OEM replacement parts.<sup>6</sup> FCA makes an identical argument to Subaru and Ford and states that, “[O]riginal parts used on all FCA US LLC vehicles... are carefully designed to act as a safety system and are rigorously impact tested to ensure optimal performance. Because of this, FCA US LLC does NOT approve of the use of

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<sup>1</sup> Max Jones & Sagar Kadam, *Total US Automotive Aftermarket Industry Size*, AutomotiveAftermarket.com, Jan. 27, 2023, <https://automotiveaftermarket.org/aftermarket-industry-trends/automotive-aftermarket-size/>.

<sup>2</sup> Subaru of America, Inc., *Position Statement: Use of Aftermarket Substitute Parts on Subaru Vehicles*, August 2021, [https://www.oem1stop.com/sites/default/files/Subaru\\_Pos\\_Aftermarket-Parts\\_Revised%288-21%29.pdf](https://www.oem1stop.com/sites/default/files/Subaru_Pos_Aftermarket-Parts_Revised%288-21%29.pdf).

<sup>3</sup> *Id.*

<sup>4</sup> Ford Motor Company, *Collision Position Statement: Use of Non-OEM and Salvage Parts on Ford Motor Company Vehicles*, May 20, 2022, [https://www.oem1stop.com/sites/default/files/Ford\\_Use\\_of\\_NonOEM\\_Parts%20-Position%20Statement%20\\_FNL\\_2022.pdf](https://www.oem1stop.com/sites/default/files/Ford_Use_of_NonOEM_Parts%20-Position%20Statement%20_FNL_2022.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> Mopar, *Use of Aftermarket Parts Position Statement*, Nov. 20, 2019, <https://www.moparrepairconnect.com/asset?id=9a721831-93f1-48ec-8e30-e07222b992ae>.

recycled, salvaged, aftermarket or reconditioned parts.”<sup>7</sup> Also, FCA prohibits the use of recycled OEM parts in its official procedures in the document entitled, *Use of Salvage/Recycled Parts*.<sup>8</sup> FCA is merely another example of an OEM using its position statements and procedures to restrict a free and competitive replacement parts market for vehicles.

In the case that LB 782 passes, the language creating definitions for OEM parts and procedures along with the provision requiring motor vehicle repairers to follow OEM procedures would have a substantial negative impact on motor vehicle repairs. OEMs such as Subaru, Ford, and FCA are only a small example of OEMs that currently have official statements and procedures in place that permit only the purchase of newly manufactured OEM replacement parts and prohibit the use of replacement parts such as recycled OEM parts sold by automotive recyclers. LB 782 would consequently give OEMs a monopoly or the ability to create a monopoly over the replacement motor vehicle parts market in Nebraska. This would be financially lucrative to the OEMs but would have severe consequences for vehicle owners and businesses engaged in automotive recycling and the alternative parts market.

## **II. LB 782 will force vehicle owners to pay more to repair their vehicles because of the elimination of a fair and competitive replacement parts market.**

If LB 782 were to pass, vehicle owners will be forced to buy expensive new OEM parts because OEM procedures restrict the ability to use any parts with the exception of newly manufactured OEM parts. By not having the ability to choose from recycled OEM and/or aftermarket replacement parts, vehicle owners will pay more to repair their vehicles – especially in cases when a repair is not being paid for by an insurance policy. According to CCC, one of the leading collision estimating systems used by the vehicle insurance and repair industry, “the notion that a typical repair is \$1,000 - \$1,500 is no longer true. It is probably closer to \$3,500 - \$5,000.”<sup>9</sup> Furthermore, the cost of vehicle repairs is likely much higher than \$5,000 since the start of the COVID-19 pandemic, which has placed significant stressors on the motor vehicle industry’s supply chains.

The high average cost of a vehicle repair being \$3,500 - \$5,000 already places substantial stress on the average American household, which does not even have the means to pay for an unexpected \$1,000 expense.<sup>10</sup> If vehicle owners can no longer choose recycled OEM parts that can be fifty to eighty percent cheaper than a new OEM parts,<sup>11</sup> average vehicle repair costs will increase. This will hurt vehicle owners while giving OEMs a monopoly in the replacement parts market.

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<sup>7</sup> *Id.*

<sup>8</sup> Mopar, *Use of Salvage/Recycled Parts*, Nov. 20, 2019, <https://www.moparrepairconnect.com/asset?id=6d021598-dc9f-4d72-8116-6c639233a0bc>

<sup>9</sup> John Huetter, *CCC: Higher-dollar repairs see customer metrics fall; chance of returns 1 in 4 when bill \$10k+*, Repairer Driven News, Nov. 25, 2019, <https://www.repairerdrivennews.com/2019/11/25/cc-higher-dollar-repairs-see-customer-metrics-fall-chance-of-returns-1-in-4-when-bill-10k/>.

<sup>10</sup> Carmen Reinicke, *56% of Americans Can’t Cover a \$1,000 Emergency Expense with Savings*, CNBC, Jan. 19, 2022, <https://www.cnbc.com/2022/01/19/56percent-of-americans-cant-cover-a-1000-emergency-expense-with-savings.html>.

<sup>11</sup> *Ace Auto Parts, Should you Buy Used Car Parts or Buy New?*, Oct. 18, 2021, <https://www.aceautoparts.com/About/Blog/entryid/132/should-you-buy-used-car-parts-or-buy-new>.

**III. LB 782 will cause vehicle repair costs to increase which will cause more vehicles involved in collisions to be declared a total loss.**

Another consequence of mandating motor vehicle repairers to follow OEM procedures is that the substantial increase in the availability and price of motor vehicle parts will result in more vehicles being declared total losses by insurers. In the case that motor vehicle repairers are mandated to only use new OEM parts and not recycled OEM or aftermarket parts, insurance companies will declare more vehicles total losses because of the premium prices for new OEM parts, which increases the cost of even minor repairs. Cars in collisions that could otherwise be fixed will be declared total losses.

**IV. A lack of availability of replacement parts will place an artificial expiration date on vehicles – thereby forcing vehicle owners to incur the costs of purchasing new vehicles.**

Eliminating recycled OEM and aftermarket replacement parts by mandating OEM procedures in repairs, LB 782 would create a situation where there is an artificial expiration date on a motor vehicle due to the lack of available replacement parts. Typically, OEMs produce new replacement parts for a vehicle line for only a few years while the vehicle is under the manufacturer's warranty. OEMs do not always manufacture or have a widely available inventory of new replacement vehicle parts for vehicles five years or older.<sup>12</sup> This scenario creates an environment where there is limited supply of new parts offered directly through OEM and dealer networks, which raises costs on vehicle owners. The limited supply of new OEM parts further highlights the need for consumers to have access to more replacement part options.

S&P Global Mobility has found that the average age of a motor vehicle in operation in the United States is 12.2 years old.<sup>13</sup> Therefore, the average vehicle in operation in the U.S. is likely unable to be repaired using new OEM parts from within the OEM network due to lack of inventory of suitable parts. Even when there are new OEM parts suitable for older vehicles available, the replacement cost can be uncomfortably high. The average vehicle on the road in the U.S. is no longer covered by a manufacturer's warranty and is commonly repaired with affordable recycled OEM and aftermarket parts. Requiring new OEM parts to be the only parts acceptable for repairs will place an artificial expiration date on motor vehicles and will push Americans to purchase a new vehicle rather than make what used to be an affordable vehicle repair.

**V. LB 782's definition of a structurally totaled vehicle may cause more total loss vehicles.**

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<sup>12</sup> Automotive News, *Factory Parts for an Older Car? Good Luck*, Nov. 2, 2013, [https://www.autonews.com/article/20131102/OEM10/311049982/factory-parts-for-an-older-car-good-luck?adobe\\_mc=MCMID%3D71472279028112611162464912821114960316%7CMCORGID%3D138FFF2554E6E7220A4C98C6%2540AdobeOrg%7CTS%3D1646334945&CSAuthResp=1%3A%3A319898%3A20957%3A24%3A%3Asuccess%3A626E30402359E96FFAE8BD8268C95B9F](https://www.autonews.com/article/20131102/OEM10/311049982/factory-parts-for-an-older-car-good-luck?adobe_mc=MCMID%3D71472279028112611162464912821114960316%7CMCORGID%3D138FFF2554E6E7220A4C98C6%2540AdobeOrg%7CTS%3D1646334945&CSAuthResp=1%3A%3A319898%3A20957%3A24%3A%3Asuccess%3A626E30402359E96FFAE8BD8268C95B9F).

<sup>13</sup> Keith Laing, *Average Age of US Cars Hits Record 12.2 Years in Fifth Straight Annual Increase*, Bloomberg, May 23, 2022, <https://www.bloomberg.com/news/articles/2022-05-23/average-age-of-us-cars-tops-12-years-amid-supply-price-woes>.

The addition of language to existing Nebraska law that adds a definition for structurally totaled vehicles is confusing and will likely cause more vehicles to unnecessarily be declared a total loss. For example, there are sophisticated tools that allow for repairs to be made on vehicles that have sustained damage to a kink or crease in a frame, unibody, engine cradle, and rear differential.

Neb. Rev. Stat. § 60-171(9)(c) states that “structurally totaled vehicle does not include a vehicle if the cost to perform repairs does not exceed seventy-five percent of the actual cash value of a vehicle.”<sup>14</sup> ARA does not see how the addition of the term “structurally totaled vehicle” changes a determination of what vehicles are declared salvage because the existing seventy-five percent threshold still applies. This language is seemingly redundant and will likely only cause an increase in vehicles that are repairable to be declared total losses.

## **VI. Conclusion**

Since 1943, the Automotive Recyclers Association (ARA) has represented professional automotive recyclers, a vibrant and thriving part of the automotive supply chain. Professional automotive recycling facilities play an important role in the vehicle repair market by providing vehicle owners with cost-effective alternatives to the more expensive new original equipment manufacturer (OEM) replacement parts. Professional automotive recyclers provide vehicle owners with the ability to choose recycled automotive repair parts, ensuring competition in the replacement parts market and providing vehicle owners with the ability to repair their vehicles with OEM replacement parts. Every day, professional automotive recyclers supply Recycled Original Equipment (ROE) ® motor vehicle replacement parts to consumers around the world. In many cases, automotive recyclers are the only source for replacement vehicle parts. For the aforementioned reasons, ARA respectfully asks you to indefinitely postpone LB 782.

Sincerely,

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<sup>14</sup> Legislative Bill 782, 108<sup>th</sup> Legislature of Nebraska First Session (2023), § 60-171(9)(c).