

**HOUSE . . . . . No. 964**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Ronald Mariano**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relating to the repair of damaged motor vehicles.

PETITION OF:

NAME:

Ronald Mariano

DISTRICT/ADDRESS:

3rd Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1092 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT RELATING TO THE REPAIR OF DAMAGED MOTOR VEHICLES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 8E of chapter 26 of the General Laws, as appearing in the 2006 Official Edition, is  
2 hereby amended by inserting after the fifth paragraph the following paragraph:—

3 The commissioner shall instruct the bureau to conduct a market conduct study of the direct payment and  
4 referral repair shop plans by motor vehicle insurers no less than every three years with an initial study no  
5 later than December 31, 2010. Said market conduct study shall, at the minimum, examine the  
6 implementation of the direct pay and referral systems and their financial impact on consumers, on body  
7 shop owners, and on the system as a whole, including cost savings measures. Said market conduct study  
8 shall include a review of compliance with the thirteenth paragraph of Section 34O of chapter 90  
9 subsection (b) of the General Laws and 211 CMR 123, 211 CMR 133 and 212 CMR 2.00. Said study  
10 shall report the results of such investigation and study and its recommendations, if any, together with  
11 drafts of legislation to the joint committee on financial services.

12 SECTION 2: Section 8G of said chapter 26, as so appearing, is hereby amended by striking out the  
13 eighteenth paragraph and inserting in place thereof the following paragraph:—

14 No appraiser or employees of an independent appraisal company, insurance company or any of its  
15 employees or representatives shall require, suggest, request, or recommend that any appraisals or repairs  
16 should or should not be made in a specified registered repair facility or facilities authorized under section  
17 34O of chapter 90 or otherwise, nor shall an appraiser or employees of an independent appraisal  
18 company, insurance company or any of its employees or representatives use coercion or intimidation to  
19 cause appraisals or repairs to be made or not made, in any specified repair facility or facilities, unless  
20 otherwise permitted by this section or section 34O of chapter 90 and by section 113O of chapter 175. The  
21 commissioner of the division of insurance shall promulgate rules and regulations for the administration  
22 and enforcement of this section. An insurance company, third party biller, agent or adjuster for such  
23 insurance company violating this section shall be punishable by a fine of not less than \$300.00 nor more  
24 than \$500.00 for each incident. The fine shall be collected by the Division of Insurance and deposited in  
25 a retained revenue account to be used by the division to carry out the enforcement of this act.  
26 Furthermore, the division of insurance shall create and make available forms for reporting such violation  
27 of this section.

28 SECTION 3: Said section 8G of said chapter 26, as so appearing, is hereby amended by striking  
29 out the nineteenth paragraph and inserting in place thereof the following paragraphs:—

30 The appraiser, representing the insurer, shall be required to negotiate in good faith, using the manual the  
31 supplement was prepared with. The repair shop may also require a completed supplementary appraisal at  
32 the time the vehicle is viewed. If so requested the repair shop must make available desk space, phone,  
33 calculator and manual used to prepare the supplement. The repair shop may, at it's choosing, expedite the  
34 repair process by submitting a supplemental estimate electronically that includes digital photos along with  
35 other supporting documentation. Any such request must be reviewed by an appraiser duly licensed under  
36 this section and must be approved or denied within 48 hours of receipt. If the appraiser approves a  
37 supplemental request submitted in this manner, the insurer shall not be required to assign an appraiser to  
38 personally inspect the damage as required by 212 CMR 2.00. If the appraiser does not approve a

39 supplement request submitted in this manner they shall state the reason in writing to the shop, and the  
40 claimant or insured, and shall be obligated to proceed in accordance with 212 CMR 2.00, and assign an  
41 appraiser who shall personally inspect the damaged vehicle within three working days of the receipt of the  
42 original request. The commissioner of the division of insurance shall promulgate rules and regulations for  
43 the administration and enforcement of this section. An insurance company, third party biller, agent or  
44 adjuster for such insurance company violating this section shall be punishable by a fine of not less than  
45 \$300.00 nor more than \$500.00 for each incident. The fine shall be collected by the Division of Insurance  
46 and deposited in a retained revenue account to be used by the division to carry out the enforcement of this  
47 act. Furthermore, the division of insurance shall create and make available forms for reporting such  
48 violation of this section.

49 SECTION 4: Section 34O of chapter 90 of the General Laws, as so appearing, is hereby amended by  
50 striking out, in lines 191 to 198, the words “provided, however, that for at least seventy-five per cent of  
51 those claims where the appraisal indicates that the cost of repairs will exceed four thousand dollars and at  
52 least twenty-five per cent of those claims where the appraisal indicates that the cost of repairs will be four  
53 thousand dollars or less, a licensed auto damage appraiser shall re-inspect the vehicle following  
54 completion of repairs and shall certify on the claim form that the work has been completed in accordance  
55 with an appraisal made pursuant to said regulations” and inserting in place thereof the following words:—  
56 provided, however, that the commissioner may establish requirements for re-inspection by licensed  
57 damage appraisers during or following the completion of repairs. In cases where a completed work claim  
58 form is required, a licensed auto damage appraiser, which may include a repair shop appraiser, shall  
59 certify that the work has been completed in accordance with an appraisal or repair order.

60 SECTION 5: Said section 34O of said chapter 90, as so appearing, is hereby amended by striking out, in  
61 line 203, the word “may” and inserting in place thereof the following word:— shall

62 SECTION 6: The 18th paragraph of said section 34O of said chapter 90, as so appearing, is hereby  
63 amended by striking out clause (a) and inserting in place thereof the following clause:—

64 (a) that the insured or claimant will be given a single list of all repair shops registered under chapter  
65 100A of the General Laws which are located in the county where the insured resides, which shall be  
66 arranged in alphabetical order according to city or town, with no highlights, asterisks, underlining, font  
67 size differences or phone number or any other form of identification to indicate that any repair shop is a  
68 referral shop or referral repair facility. Insurers shall also provide a written disclosure, approved by the  
69 commissioner, to the insured of their rights and shall not guarantee or warrant the quality of repairs at  
70 any repair facility.

71 SECTION 7: The 18th paragraph of said section 34O of said chapter 90, as so appearing, is hereby  
72 amended by striking out clause (c) and inserting in place thereof the following clause:—

73 (c) No appraiser or employees of an independent appraisal company, insurance company or any of its  
74 employees or representatives, shall require, suggest, request, or recommend that any appraisals or repairs  
75 should or should not be made in a specified registered repair facility or facilities authorized under section  
76 34O of chapter 90 or otherwise, nor shall an appraiser or employees of an independent appraisal  
77 company, insurance company or any of its employees or representatives use coercion or intimidation to  
78 cause appraisals or repairs to be made or not made, in any specified repair facility or facilities, unless  
79 otherwise permitted by this section or by section 8G of chapter 26 and by section 113O of chapter 175.

80 SECTION 8: Said section 34O of said chapter 90, as so appearing, is hereby amended by inserting after  
81 the 18th paragraph the following paragraph:—

82 The commissioner of the division of insurance shall promulgate rules and regulations for the  
83 administration and enforcement of clauses (a) through (e) of this paragraph. An insurance company, third  
84 party biller, agent or adjuster for such insurance company violating clause (a) through (e) shall be  
85 punishable by a fine of not less than \$300.00 nor more than \$500.00 for each incident. The fine shall be

86 collected by the Division of Insurance and deposited in a retained revenue account to be used by the  
87 division to carry out the enforcement of this act. Furthermore, the division of insurance shall create and  
88 make available forms for reporting such violation of this section.

89 SECTION 9: Section 2 of chapter 100A of the General Laws, as so appearing, is hereby amended by  
90 striking out, in line 17, the words “ten thousand” and inserting in place thereof the following figure:—  
91 25,000

92 SECTION 10: Said section 2 of said chapter 100A, as so appearing, is hereby amending by inserting after  
93 the 7<sup>th</sup> sentence the following sentence:— Said application shall be further accompanied by proof in  
94 writing from a licensed insurance company registered in the Commonwealth of the motor vehicle repair  
95 shop’s workers’ compensation insurance, if applicable, and liability insurance.

96 SECTION 11: Said section 2 of said chapter 100A, as so appearing, is hereby further amended by  
97 inserting after 3<sup>rd</sup> paragraph the following 4 paragraphs:—

98 Any motor vehicle repair shop applying for a certificate of registration under the current chapter is  
99 required to have all local, state, and federal licenses and permits including a state sales tax identification  
100 number, a federal tax identification number, and a hazardous waste or environmental protection agency  
101 number. Every shop is required at all times to operate in accordance with the current environmental  
102 protection agency compliance regulations, current occupational safety and health administration  
103 regulations, and to comply with all state and local fire and electrical codes and must provide proof of  
104 compliance upon request.

105 Except for glass repair facilities and specialty repair facilities otherwise specifically exempted by the  
106 commissioner of insurance for good cause, every motor vehicle repair shop shall have, and as a condition  
107 for registration shall certify that it has: (1) a paint spray booth or room meeting the requirements of all  
108 applicable statutes, ordinances, and regulations promulgated by the commissioner; (2) high-volume, low-  
109 pressure paint spraying equipment, or its equivalent; (3) metal inert gas welding equipment, or its

110 equivalent; (4) proper equipment and permits, or an identified contracted source having proper equipment  
111 and permits, for the evacuation of motor vehicle air-conditioning systems; (5) proper equipment, or an  
112 identified contracted source having proper equipment, for motor vehicle frame and unibody repair and  
113 measuring; and (6) proper equipment, or an identified contracted source having proper equipment, for  
114 performing motor vehicle wheel alignment.

115 The commissioner of insurance shall promulgate reasonable rules and regulations for the establishment of  
116 any additional minimum equipment standards required for every registered motor vehicle repair shop in  
117 the commonwealth.

118 The division of standards may inspect all registered repair facilities at their discretion to insure  
119 compliance with the aforementioned requirements. Failure to comply with any of the requirements will  
120 result in the forfeiture of the registration until such time as the division re-inspects the facility and  
121 determines the shop is in full compliance. No insurer or its agents may negotiate the repair of any vehicle  
122 with a shop that is unregistered or has its registration suspended nor with any unlicensed individual in a  
123 repair facility.

124 SECTION 12: Section 2A of said chapter 100A, as so appearing, is hereby amended by striking out, in  
125 line 3, the words “ten thousand” and inserting in place thereof the following figure:— 25,000

126 SECTION 13. Chapter 100A of the General Laws is hereby amended by adding the following section:—

127 100A:11 Auto glass replacement and/or repair or rental and replacement vehicle transactions and  
128 services; 3<sup>rd</sup> party billing limitations

129 Section 11. Notwithstanding any provisions of any general or special law to the contrary, no company  
130 which serves as a third party biller for a particular insurance company, whether a carrier or a producer,  
131 may additionally provide auto glass replacement and/or repair services or rental and replacement vehicle  
132 transactions and services for such insurance company. A third-party biller shall be defined as any

133 company who processes, pays and monitors the payment of auto glass claims or rental and replacement  
134 vehicle transactions and services on behalf of an insurance carrier or insurance producer.

135 Such third-party biller shall not be related to any glass replacement, repair services or rental and  
136 replacement vehicle company in any way. This includes stock ownership or such ownership by any direct  
137 family relative.

138 Such third-party biller shall file with the Office of the Insurance Commissioner statements of ownership  
139 every year on a prescribed schedule, or upon any material change in ownership.

140 All third-party billers shall file with the Office of the Insurance Commissioner all contracts held with  
141 specific insurance companies, either carriers or producers, which delineate the provisions of the business  
142 relationship, excluding the amount of consideration provided for third-party billing services.

143 The commissioner of the division of insurance shall promulgate rules and regulations for the  
144 administration and enforcement of this section. Each violation resulting in a failure to file either the  
145 statement of ownership and/or agreements between insurance companies and third-party billers shall  
146 result in a fine of \$5,000.00 per incident.. The fine shall be collected by the Division of Insurance and  
147 deposited in a retained revenue account to be used by the division to carry out the enforcement of this act.  
148 Furthermore, the division of insurance shall create and make available forms for reporting such violation  
149 of this section.

150 An insurance company or third party biller for such insurance company violating the first paragraph of  
151 this section shall be punishable by a fine of \$1000.00 for each incident. The fine shall be collected by the  
152 Division of Insurance and deposited in a retained revenue account to be used by the division to carry out  
153 the enforcement of this act. Furthermore, the division of insurance shall create and make available forms  
154 for reporting such violation of this section.

155 SECTION 14. Chapter 100A of the General Laws is hereby amended by adding the following section:—

156 100A:12 Auto glass replacement and/or repair or rental and replacement vehicle transactions and  
157 services; restrictions

158 Section 12. Notwithstanding any provisions of any general or special law to the contrary, no insurance  
159 company, third party biller, agent or adjuster for such insurance company that issues or renews in the  
160 commonwealth any policy of insurance covering in whole or in part any motor vehicle MAY require,  
161 suggest, request, or recommend that any person insured under said policy use a particular company or  
162 location for the providing of auto glass replacement and/or repair services or rental and replacement  
163 vehicle transactions and services or products insured in part by that policy.

164 No such insurance company, third party biller, agent or adjuster for such insurance company may engage  
165 in any act or practice of intimidation, coercion, threat or inducement for or against any such insured  
166 person to use a particular company or

167 location to provide such services or products nor shall such insurance company, producer or adjuster  
168 provide for, allow or facilitate telephonic claims information directly to preferred automobile glass repair  
169 shops or rental and replacement vehicle companies.

170 The provisions of this section are applicable only to auto glass repair shops registered under the  
171 provisions of chapter 100A, and rental and replacement vehicle companies who will accept payments  
172 from insurance companies. The commissioner of the division of insurance shall promulgate rules and  
173 regulations for the administration and enforcement of this section. An insurance company, third party  
174 biller, agent or adjuster for such insurance company violating this section shall be punishable by a fine of  
175 not less than \$300.00 nor more than \$500.00 for each incident. The fine shall be collected by the Division  
176 of Insurance and deposited in a retained revenue account to be used by the division to carry out the  
177 enforcement of this act. Furthermore, the division of insurance shall create and make available forms for  
178 reporting such violation of this section.

179 Any violations of this chapter are subject to the provisions of chapter 93A.

180 SECTION 15: Section 1130 of chapter 175 of the General Laws, as so appearing, is hereby amended by  
181 striking out, in lines 75 to 85, the words “provided, however, that for at least seventy-five per cent of  
182 those claims where the appraisal indicates that the cost of repairs will exceed four thousand dollars and at  
183 least twenty-five per cent of those claims where the appraisal indicates that the cost of repairs will be four  
184 thousand dollars or less, a licensed auto damage appraiser shall re-inspect the vehicle following  
185 completion of repairs and shall certify on the claim form that the work has been completed in accordance  
186 with an appraisal made pursuant to said regulations” and inserting in place thereof the following words:—  
187 provided, however, that the commissioner may establish requirements for re-inspection by licensed  
188 damage appraisers during or following the completion of repairs. In cases where a completed work claim  
189 form is required, a licensed auto damage appraiser, which may include a repair shop appraiser, shall  
190 certify that the work has been completed in accordance with an appraisal or repair order.

191 SECTION 16: The 4th paragraph of said section 1130 of said chapter 175, as so appearing, is hereby  
192 amended by striking out clause (a) and inserting in place thereof the following clause:—

193 (a) that the insured or claimant will be given a single list of all repair shops registered under chapter 100A  
194 of the General Laws which are located in the county where the insured resides, which shall be arranged in  
195 alphabetical order according to city or town, with no highlights, asterisks, underlining, font size  
196 differences or phone number or any other form of identification to indicate that any repair shop is a  
197 referral shop or referral repair facility. Insurers shall also provide a written disclosure, approved by the  
198 commissioner, to the insured of their rights and shall not guarantee or warrant the quality of repairs at  
199 any repair facility.

200 SECTION 17: The 4th paragraph of said section 1130 of said chapter 175, as so appearing, is hereby  
201 further amended by striking out clause (c) and inserting in place thereof the following clause:—

202 (c) no appraiser or employees of an independent appraisal company, insurance company or any of its  
203 employees or representatives shall require, suggest, request, or recommend that any appraisals or repairs

204 should or should not be made in a specified registered repair facility or facilities authorized under section  
205 34O of chapter 90 or otherwise, nor shall an appraiser or employees of an independent appraisal  
206 company, insurance company or any of its employees or representatives use coercion or intimidation to  
207 cause appraisals or repairs to be made or not made, in any specified repair facility or facilities, unless  
208 otherwise permitted by this section or by section or section 8G of chapter 26 and by section 34O of  
209 chapter 90.

210 SECTION 18: Said section 113O of said chapter 175, as so appearing, is hereby amended by inserting  
211 after the 4th paragraph the following paragraph:—

212 The commissioner of the division of insurance shall promulgate rules and regulations for the  
213 administration and enforcement of clauses (a) through (e) of this paragraph. An insurance company, third  
214 party biller, agent or adjuster for such insurance company violating clause (a) through (e) shall be  
215 punishable by a fine of not less than \$300.00 nor more than \$500.00 for each incident. The fine shall be  
216 collected by the Division of Insurance and deposited in a retained revenue account to be used by the  
217 division to carry out the enforcement of this act. Furthermore, the division of insurance shall create and  
218 make available forms for reporting such violation of this section.