

HOUSE No. 1006

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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
2 Official Edition, is hereby amended by inserting after the fifth paragraph the following
3 paragraph:—

4 The commissioner shall instruct the bureau to conduct a market conduct study of the
5 direct payment and referral repair shop plans by motor vehicle insurers no less than every three
6 years with an initial study no later than December 31, 2009. Said market conduct study shall, at
7 the minimum, examine the implementation of the direct pay and referral systems and their
8 financial impact on consumers, on body shop owners, and on the system as a whole, including
9 cost savings measures. Said market conduct study shall include a review of compliance with the
10 thirteenth paragraph of Section 34O of chapter 90 subsection (b) of the General Laws and 211
11 CMR 123, 211 CMR 133 and 212 CMR 2.00. Said study shall report the results of such
12 investigation and study and its recommendations, if any, together with drafts of legislation to the
13 joint committee on financial services.

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

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

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

The appraiser, representing the insurer, shall be required to negotiate in good faith, using the manual the supplement was prepared with. The repair shop may also require a completed supplementary appraisal at the time the vehicle is viewed. If so requested the repair shop must make available desk space, phone, calculator and manual used to prepare the supplement. The

36 repair shop may, at it's choosing, expedite the repair process by submitting a supplemental
37 estimate electronically that includes digital photos along with other supporting documentation.
38 Any such request must be reviewed by an appraiser duly licensed under this section and must be
39 approved or denied within 24 hours of receipt. If the appraiser approves a supplemental request
40 submitted in this manner, the insurer shall not be required to assign an appraiser to personally
41 inspect the damage as required by 212 CMR 2.00. If the appraiser does not approve a
42 supplement request submitted in this manner they shall state the reason in writing to the shop,
43 and the claimant or insured, and shall be obligated to proceed in accordance with 212 CMR 2.00,
44 and assign an appraiser who shall personally inspect the damaged vehicle within three working
45 days of the receipt of the original request. The commissioner of the division of insurance shall
46 promulgate rules and regulations for the administration and enforcement of this section. Any
47 appraiser, insurance company, third party biller, agent or adjuster for such insurance company
48 violating this section shall be punishable by a fine of not less than \$300.00 nor more than
49 \$500.00 for each incident. The fine shall be collected by the Division of Insurance and deposited
50 in a retained revenue account to be used by the division to carry out the enforcement of this act.
51 Furthermore, the division of insurance shall create and make available forms for reporting such
52 violation of this section.

53 SECTION 4: Section 34O of chapter 90 of the General Laws, as so appearing, is hereby
54 amended by striking out, in lines 191 to 198, the words "provided, however, that for at least
55 seventy-five per cent of those claims where the appraisal indicates that the cost of repairs will
56 exceed four thousand dollars and at least twenty-fiver per cent of those claims where the
57 appraisal indicates that the cost of repairs will be four thousand dollars or less, a licensed auto
58 damage appraiser shall re-inspect the vehicle following completion of repairs and shall certify on

the claim form that the work has been completed in accordance with an appraisal made pursuant to said regulations” and inserting in place thereof the following words:—provided, however, that the commissioner may establish requirements for re-inspection by licensed damage appraisers during or following the completion of repairs. In cases where a completed work claim form is required, a licensed auto damage appraiser, which may include a repair shop appraiser, shall certify that the work has been completed in accordance with an appraisal or repair order.

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

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

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

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

(c) No appraiser or employees of an independent appraisal company, insurance company or any of its employees or representatives, shall require, suggest, request, or recommend that any appraisals or repairs should or should not be made in a specified registered repair facility or facilities authorized under section 34O of chapter 90 or otherwise, nor shall an appraiser or employees of an independent appraisal company, insurance company or any of its employees or representatives use coercion or intimidation to cause appraisals or repairs to be made or not made, in any specified repair facility or facilities.

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

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

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

SECTION 10: Said section 2 of said chapter 100A, as so appearing, is hereby amending by inserting after the 7th sentence the following sentence:—Said application shall be further

103 accompanied by proof in writing from a licensed insurance company registered in the
104 Commonwealth of the motor vehicle repair shop's workers' compensation insurance, if
105 applicable, and liability insurance.

106 SECTION 11: Said section 2 of said chapter 100A, as so appearing, is hereby further
107 amended by inserting after 3rd paragraph the following 4 paragraphs:—

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

115 Except for glass repair facilities and specialty repair facilities otherwise specifically
116 exempted by the commissioner of insurance for good cause, every motor vehicle repair shop
117 shall have, and as a condition for registration shall certify that it has: (1) a paint spray booth or
118 room meeting the requirements of all applicable statutes, ordinances, and regulations
119 promulgated by the commissioner; (2) high-volume, low-pressure paint spraying equipment, or
120 its equivalent; (3) metal inert gas welding equipment, or its equivalent; (4) proper equipment and
121 permits, or an identified contracted source having proper equipment and permits, for the
122 evacuation of motor vehicle air-conditioning systems; (5) proper equipment, or an identified
123 contracted source having proper equipment, for motor vehicle frame and unibody repair and

124 measuring; and (6) proper equipment, or an identified contracted source having proper
125 equipment, for performing motor vehicle wheel alignment.

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

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

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

138 SECTION 13: Section 113O of chapter 175 of the General Laws, as so appearing, is
139 hereby amended by striking out, in lines 75 to 85, the words “provided, however, that for at least
140 seventy-five per cent of those claims where the appraisal indicates that the cost of repairs will
141 exceed four thousand dollars and at least twenty-fiver per cent of those claims where the
142 appraisal indicates that the cost of repairs will be four thousand dollars or less, a licensed auto
143 damage appraiser shall re-inspect the vehicle following completion of repairs and shall certify on
144 the claim form that the work has been completed in accordance with an appraisal made pursuant
145 to said regulations” and inserting in place thereof the following words:—provided, however, that

the commissioner may establish requirements for re-inspection by licensed damage appraisers during or following the completion of repairs. In cases where a completed work claim form is required, a licensed auto damage appraiser, which may include a repair shop appraiser, shall certify that the work has been completed in accordance with an appraisal or repair order.

SECTION 14: The 4th paragraph of said section 113O of said chapter 175, as so appearing, is hereby amended by striking out clause (a) and inserting in place thereof the following clause:—

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

SECTION 15: The 4th paragraph of said section 113O of said chapter 175, as so appearing, is hereby further amended by striking out clause (c) and inserting in place thereof the following clause:—

(c) no appraiser or employees of an independent appraisal company, insurance company or any of its employees or representatives shall require, suggest, request, or recommend that any appraisals or repairs should or should not be made in a specified registered repair facility or facilities authorized under section 34O of chapter 90 or otherwise, nor shall an appraiser or employees of an independent appraisal company, insurance company or any of its employees or

168 representatives use coercion or intimidation to cause appraisals or repairs to be made or not
169 made, in any specified repair facility or facilities.

170 SECTION 16: Said section 113O of said chapter 175, as so appearing, is hereby
171 amended by inserting after the 4th paragraph the following paragraph:—

172 The commissioner of the division of insurance shall promulgate rules and regulations for
173 the administration and enforcement of clauses (a) through (e) of this paragraph. Any appraiser,
174 insurance company, third party biller, agent or adjuster for such insurance company violating
175 clause (a) through (e) shall be punishable by a fine of not less than \$300.00 nor more than
176 \$500.00 for each incident. The fine shall be collected by the Division of Insurance and deposited
177 in a retained revenue account to be used by the division to carry out the enforcement of this act.
178 Furthermore, the division of insurance shall create and make available forms for reporting such
179 violation of this section.