

HOUSE No. 301

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 adoption of the accompanying bill:

An Act relating to the repair of damaged motor vehicles.

PETITION OF:

NAME:

Ronald Mariano

DISTRICT/ADDRESS:

3rd Norfolk

HOUSE No. 301

By Mr. Mariano of Quincy, a petition (accompanied by bill, House, No. 301) of Ronald Mariano relative to appraisers and the repair of damaged motor vehicles. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 964 OF 2009-2010.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Eleven
—————

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, 2010. 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.

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

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

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

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

54 SECTION 4: Section 34O of chapter 90 of the General Laws, as so appearing, is hereby
55 amended by striking out, in lines 191 to 198, the words "provided, however, that for at least

56 seventy-five per cent of those claims where the appraisal indicates that the cost of repairs will
57 exceed four thousand dollars and at least twenty-five per cent of those claims where the appraisal
58 indicates that the cost of repairs will be four thousand dollars or less, a licensed auto damage
59 appraiser shall re-inspect the vehicle following completion of repairs and shall certify on the
60 claim form that the work has been completed in accordance with an appraisal made pursuant to
61 said regulations” and inserting in place thereof the following words:— provided, however, that
62 the commissioner may establish requirements for re-inspection by licensed damage appraisers
63 during or following the completion of repairs. In cases where a completed work claim form is
64 required, a licensed auto damage appraiser, which may include a repair shop appraiser, shall
65 certify that the work has been completed in accordance with an appraisal or repair order.

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

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

72 (a) that the insured or claimant will be given a single list of all repair shops registered
73 under chapter 100A of the General Laws which are located in the county where the insured
74 resides, which shall be arranged in alphabetical order according to city or town, with no
75 highlights, asterisks, underlining, font size differences or phone number or any other form of
76 identification to indicate that any repair shop is a referral shop or referral repair facility. Insurers

77 shall also provide a written disclosure, approved by the commissioner, to the insured of their
78 rights and shall not guarantee or warrant the quality of repairs at any repair facility.

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

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

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

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

98 the division of insurance shall create and make available forms for reporting such violation of
99 this section.

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

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

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

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

117 Except for glass repair facilities and specialty repair facilities otherwise specifically
118 exempted by the commissioner of insurance for good cause, every motor vehicle repair shop
119 shall have, and as a condition for registration shall certify that it has: (1) a paint spray booth or

120 room meeting the requirements of all applicable statutes, ordinances, and regulations
121 promulgated by the commissioner; (2) high-volume, low-pressure paint spraying equipment, or
122 its equivalent; (3) metal inert gas welding equipment, or its equivalent; (4) proper equipment and
123 permits, or an identified contracted source having proper equipment and permits, for the
124 evacuation of motor vehicle air-conditioning systems; (5) proper equipment, or an identified
125 contracted source having proper equipment, for motor vehicle frame and unibody repair and
126 measuring; and (6) proper equipment, or an identified contracted source having proper
127 equipment, for performing motor vehicle wheel alignment.

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

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

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

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

142 100A:11 Auto glass replacement and/or repair or rental and replacement vehicle
143 transactions and services; 3rd party billing limitations

144 Section 11. Notwithstanding any provisions of any general or special law to the contrary,
145 no company which serves as a third party biller for a particular insurance company, whether a
146 carrier or a producer, may additionally provide auto glass replacement and/or repair services or
147 rental and replacement vehicle transactions and services for such insurance company. A third-
148 party biller shall be defined as any company who processes, pays and monitors the payment of
149 auto glass claims or rental and replacement vehicle transactions and services on behalf of an
150 insurance carrier or insurance producer.

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

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

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

161 The commissioner of the division of insurance shall promulgate rules and regulations for
162 the administration and enforcement of this section. Each violation resulting in a failure to file
163 either the statement of ownership and/or agreements between insurance companies and third-

164 party billers shall result in a fine of \$5,000.00 per incident.. The fine shall be collected by the
165 Division of Insurance and deposited in a retained revenue account to be used by the division to
166 carry out the enforcement of this act. Furthermore, the division of insurance shall create and
167 make available forms for reporting such violation of this section.

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

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

175 100A:12 Auto glass replacement and/or repair or rental and replacement vehicle
176 transactions and services; restrictions

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

184 No such insurance company, third party biller, agent or adjuster for such insurance
185 company may engage in any act or practice of intimidation, coercion, threat or inducement for or
186 against any such insured person to use a particular company or
187 location to provide such services or products nor shall such insurance company, producer
188 or adjuster provide for, allow or facilitate telephonic claims information directly to preferred
189 automobile glass repair shops or rental and replacement vehicle companies.

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

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

201 SECTION 15: Section 113O of chapter 175 of the General Laws, as so appearing, is
202 hereby amended by striking out, in lines 75 to 85, the words “provided, however, that for at least
203 seventy-five per cent of those claims where the appraisal indicates that the cost of repairs will
204 exceed four thousand dollars and at least twenty-five per cent of those claims where the appraisal
205 indicates that the cost of repairs will be four thousand dollars or less, a licensed auto damage

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

213 SECTION 16: The 4th paragraph of said section 113O of said chapter 175, as so
214 appearing, is hereby amended by striking out clause (a) and inserting in place thereof the
215 following clause:—

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

223 SECTION 17: The 4th paragraph of said section 113O of said chapter 175, as so
224 appearing, is hereby further amended by striking out clause (c) and inserting in place thereof the
225 following clause:—

226 (c) no appraiser or employees of an independent appraisal company, insurance company
227 or any of its employees or representatives shall require, suggest, request, or recommend that any

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

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

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