

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

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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:	DISTRICT/ADDRESS:
Ronald Mariano	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  
4 and referral repair shop plans by motor vehicle insurers no less than every three years with an initial  
5 study no 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 340 of chapter 90  
9 subsection (b) of the General Laws and 211 CMR 123, 211 CMR 133 and 212 CMR 2.00. Said study shall  
10 report the results of such investigation and study and its recommendations, if any, together with drafts  
11 of legislation to the joint committee on financial services.

12

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

15 No appraiser or employees of an independent appraisal company, insurance company or any of its  
16 employees or representatives shall require, suggest, request, or recommend that any appraisals or  
17 repairs should or should not be made in a specified registered repair facility or facilities authorized  
18 under section 340 of chapter 90 or otherwise, nor shall an appraiser or employees of an independent  
19 appraisal company, insurance company or any of its employees or representatives use coercion or  
20 intimidation to cause appraisals or repairs to be made or not made, in any specified repair facility or  
21 facilities, unless otherwise permitted by this section or section 340 of chapter 90 and by section 1130 of  
22 chapter 175. The commissioner of the division of insurance shall promulgate rules and regulations for  
23 the administration and enforcement of this section. An insurance company, third party biller, agent or  
24 adjuster for such insurance company violating this section shall be punishable by a fine of not less than  
25 \$300.00 nor more than \$500.00 for each incident. The fine shall be collected by the Division of  
26 Insurance and deposited in a retained revenue account to be used by the division to carry out the  
27 enforcement of this act. Furthermore, the division of insurance shall create and make available forms  
28 for reporting such violation of this section.

29

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

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

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

51

52 SECTION 4: Section 340 of chapter 90 of the General Laws, as so appearing, is hereby amended by  
53 striking out, in lines 191 to 198, the words “provided, however, that for at least seventy-five per cent of  
54 those claims where the appraisal indicates that the cost of repairs will exceed four thousand dollars and  
55 at least twenty-five per cent of those claims where the appraisal indicates that the cost of repairs will be  
56 four thousand dollars or less, a licensed auto damage appraiser shall re-inspect the vehicle following  
57 completion of repairs and shall certify on the claim form that the work has been completed in  
58 accordance with an appraisal made pursuant to said regulations” and inserting in place thereof the

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

64

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

67

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

70 (a) that the insured or claimant will be given a single list of all repair shops registered under chapter  
71 100A of the General Laws which are located in the county where the insured resides, which shall be  
72 arranged in alphabetical order according to city or town, with no highlights, asterisks, underlining, font  
73 size differences or phone number or any other form of identification to indicate that any repair shop is a  
74 referral shop or referral repair facility. Insurers shall also provide a written disclosure, approved by the  
75 commissioner, to the insured of their rights and shall not guarantee or warrant the quality of repairs  
76 at any repair facility.

77

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

80 (c) No appraiser or employees of an independent appraisal company, insurance company or any of its  
81 employees or representatives, shall require, suggest, request, or recommend that any appraisals or  
82 repairs should or should not be made in a specified registered repair facility or facilities authorized  
83 under section 340 of chapter 90 or otherwise, nor shall an appraiser or employees of an independent  
84 appraisal company, insurance company or any of its employees or representatives use coercion or  
85 intimidation to cause appraisals or repairs to be made or not made, in any specified repair facility or  
86 facilities, unless otherwise permitted by this section or by section 8G of chapter 26 and by section 1130  
87 of chapter 175.

88

89 SECTION 8: Said section 340 of said chapter 90, as so appearing, is hereby amended by inserting after  
90 the 18th paragraph the following paragraph:—

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

98

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

101 25,000

102

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

107

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

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

117

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

124 having proper equipment and permits, for the evacuation of motor vehicle air-conditioning systems; (5)  
125 proper equipment, or an identified contracted source having proper equipment, for motor vehicle frame  
126 and unibody repair and measuring; and (6) proper equipment, or an identified contracted source having  
127 proper equipment, for performing motor vehicle wheel alignment.

128

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

132

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

139

140 SECTION 12: Section 2A of said chapter 100A, as so appearing, is hereby amended by striking out, in line  
141 3, the words “ten thousand” and inserting in place thereof the following figure:— 25,000

142

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

144



145 100A:11 Auto glass replacement and/or repair or rental and replacement vehicle transactions and  
146 services; 3<sup>rd</sup> party billing limitations

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

153

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

157

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

160

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

164

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

172

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

178

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

180

181 100A:12 Auto glass replacement and/or repair or rental and replacement vehicle transactions and  
182 services; restrictions

183

184 Section 12. Notwithstanding any provisions of any general or special law to the contrary, no insurance  
185 company, third party biller, agent or adjuster for such insurance company that issues or renews in the

186 commonwealth any policy of insurance covering in whole or in part any motor vehicle MAY require,  
187 suggest, request, or recommend that any person insured under said policy use a particular company or  
188 location for the providing of auto glass replacement and/or repair services or rental and replacement  
189 vehicle transactions and services or products insured in part by that policy.

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

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

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

206

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

219

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

222 (a) that the insured or claimant will be given a single list of all repair shops registered under chapter  
223 100A of the General Laws which are located in the county where the insured resides, which shall be  
224 arranged in alphabetical order according to city or town, with no highlights, asterisks, underlining, font  
225 size differences or phone number or any other form of identification to indicate that any repair shop is a  
226 referral shop or referral repair facility. Insurers shall also provide a written disclosure, approved by the  
227 commissioner, to the insured of their rights and shall not guarantee or warrant the quality of repairs  
228 at any repair facility.

229

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

232 (c) no appraiser or employees of an independent appraisal company, insurance company or any of its  
233 employees or representatives shall require, suggest, request, or recommend that any appraisals or  
234 repairs should or should not be made in a specified registered repair facility or facilities authorized  
235 under section 340 of chapter 90 or otherwise, nor shall an appraiser or employees of an independent  
236 appraisal company, insurance company or any of its employees or representatives use coercion or  
237 intimidation to cause appraisals or repairs to be made or not made, in any specified repair facility or  
238 facilities, unless otherwise permitted by this section or by section or section 8G of chapter 26 and by  
239 section 340 of chapter 90.

240

241 SECTION 18: Said section 1130 of said chapter 175, as so appearing, is hereby amended by inserting  
242 after the 4th paragraph the following paragraph:—

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

250