

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Robert J. Nyman

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:

Robert J. Nyman

DISTRICT/ADDRESS:

5th Plymouth

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 5053 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and 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 Official Edition, is
2 hereby amended by inserting after the fifth paragraph the following paragraph:—

3

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

13

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

16

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

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

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

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56 SECTION 4: Section 34O of chapter 90 of the General Laws, as so appearing, is hereby amended by
57 striking out, in lines 191 to 198, the words “provided, however, that for at least seventy-five per cent of
58 those claims where the appraisal indicates that the cost of repairs will exceed four thousand dollars and
59 at least twenty-five per cent of those claims where the appraisal indicates that the cost of repairs will
60 be four thousand dollars or less, a licensed auto damage appraiser shall re-inspect the vehicle following
61 completion of repairs and shall certify on the claim form that the work has been completed in
62 accordance with an appraisal made pursuant to said regulations” and inserting in place thereof the
63 following words:—

64

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

69

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

72

73 shall

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

79

80 (a) that the insured or claimant will be given a single list of all repair shops registered under chapter
81 100A of the General Laws which are located in the county where the insured resides, which shall be
82 arranged in alphabetical order according to city or town, with no highlights, asterisks, underlining, font
83 size differences or phone number or any other form of identification to indicate that any repair shop is a
84 referral shop or referral repair facility. Insurers shall also provide a written disclosure, approved by the
85 commissioner, to the insured of their rights and shall not guarantee or warrant the quality of repairs
86 at any repair facility.

87

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

90

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

98

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

101

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

109

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

112

113 25,000

114

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

117

118 Said application shall be further accompanied by proof in writing from a licensed insurance company
119 registered in the Commonwealth of the motor vehicle repair shop’s workers’ compensation insurance, if
120 applicable, and liability insurance.

121

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

124

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

132

133 Except for glass repair facilities and specialty repair facilities otherwise specifically exempted by the
134 commissioner of insurance for good cause, every motor vehicle repair shop shall have, and as a
135 condition for registration shall certify that it has: (1) a paint spray booth or room meeting the
136 requirements of all applicable statutes, ordinances, and regulations promulgated by the commissioner;
137 (2) high-volume, low-pressure paint spraying equipment, or its equivalent; (3) metal inert gas welding
138 equipment, or its equivalent; (4) proper equipment and permits, or an identified contracted source
139 having proper equipment and permits, for the evacuation of motor vehicle air-conditioning systems; (5)
140 proper equipment, or an identified contracted source having proper equipment, for motor vehicle frame
141 and unibody repair and measuring; and (6) proper equipment, or an identified contracted source having
142 proper equipment, for performing motor vehicle wheel alignment.

143

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

147

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

154

155 SECTION 12: Section 2A of said chapter 100A, as so appearing, is hereby amended by striking out, in line
156 3, the words “ten thousand” and inserting in place thereof the following figure:—

157

158 25,000

159

160 SECTION 13: Section 1130 of chapter 175 of the General Laws, as so appearing, is hereby amended by
161 striking out, in lines 75 to 85, the words “provided, however, that for at least seventy-five per cent of
162 those claims where the appraisal indicates that the cost of repairs will exceed four thousand dollars and
163 at least twenty-five per cent of those claims where the appraisal indicates that the cost of repairs will
164 be four thousand dollars or less, a licensed auto damage appraiser shall re-inspect the vehicle following
165 completion of repairs and shall certify on the claim form that the work has been completed in
166 accordance with an appraisal made pursuant to said regulations” and inserting in place thereof the
167 following words:—

168

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

173

174 SECTION 14: The 4th paragraph of said section 1130 of said chapter 175, as so appearing, is hereby
175 amended by striking out clause (a) and inserting in place thereof the following clause:—

176

177 (a) that the insured or claimant will be given a single list of all repair shops registered under chapter
178 100A of the General Laws which are located in the county where the insured resides, which shall be
179 arranged in alphabetical order according to city or town, with no highlights, asterisks, underlining, font
180 size differences or phone number or any other form of identification to indicate that any repair shop is a
181 referral shop or referral repair facility. Insurers shall also provide a written disclosure, approved by the
182 commissioner, to the insured of their rights and shall not guarantee or warrant the quality of repairs
183 at any repair facility.

184

185 SECTION 15: The 4th paragraph of said section 1130 of said chapter 175, as so appearing, is hereby
186 further amended by striking out clause (c) and inserting in place thereof the following clause:—

187

188 (c) no appraiser or employees of an independent appraisal company, insurance company or any of its
189 employees or representatives shall require, suggest, request, or recommend that any appraisals or
190 repairs should or should not be made in a specified registered repair facility or facilities authorized
191 under section 340 of chapter 90 or otherwise, nor shall an appraiser or employees of an independent
192 appraisal company, insurance company or any of its employees or representatives use coercion or
193 intimidation to cause appraisals or repairs to be made or not made, in any specified repair facility or
194 facilities.

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196 SECTION 16: Said section 1130 of said chapter 175, as so appearing, is hereby amended by inserting
197 after the 4th paragraph the following paragraph:—

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

206