

HOUSE No. 00301

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

HOUSE No. 00301

By Mr. Ronald Mariano of Quincy, petition (accompanied by bill, House, No. 00301) of Ronald Mariano relative to appraisers and the repair of damaged motor vehicles. Joint Committee on 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 Official
2 Edition, is 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
4 payment and referral repair shop plans by motor vehicle insurers no less than every three years
5 with an initial study no later than December 31, 2010. Said market conduct study shall, at the
6 minimum, examine the implementation of the direct pay and referral systems and their financial
7 impact on consumers, on body shop owners, and on the system as a whole, including cost
8 savings measures. Said market conduct study shall include a review of compliance with the
9 thirteenth paragraph of Section 34O of chapter 90 subsection (b) of the General Laws and 211

10 CMR 123, 211 CMR 133 and 212 CMR 2.00. Said study shall report the results of such
11 investigation and study and its recommendations, if any, together with drafts of legislation to the
12 joint committee on financial services.

13 SECTION 2: Section 8G of said chapter 26, as so appearing, is hereby amended by striking out
14 the 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
16 its employees or representatives shall require, suggest, request, or recommend that any appraisals
17 or repairs should or should not be made in a specified registered repair facility or facilities
18 authorized under section 34O of chapter 90 or otherwise, nor shall an appraiser or employees of
19 an independent appraisal company, insurance company or any of its employees or
20 representatives use coercion or intimidation to cause appraisals or repairs to be made or not
21 made, in any specified repair facility or facilities, unless otherwise permitted by this section or
22 section 34O of chapter 90 and by section 113O of chapter 175. The commissioner of the
23 division of insurance shall promulgate rules and regulations for the administration and
24 enforcement of this section. An insurance company, third party biller, agent or adjuster for such
25 insurance company violating this section shall be punishable by a fine of not less than \$300.00
26 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
29 forms for reporting such violation of this section.

30 SECTION 3: Said section 8G of said chapter 26, as so appearing, is hereby amended by striking
31 out the 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
33 manual the supplement was prepared with. The repair shop may also require a completed
34 supplementary appraisal at the time the vehicle is viewed. If so requested the repair shop must
35 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 48 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. An
47 insurance company, third party biller, agent or adjuster for such insurance company violating this
48 section shall be punishable by a fine of not less than \$300.00 nor more than \$500.00 for each
49 incident. The fine shall be collected by the Division of Insurance and deposited in a retained
50 revenue account to be used by the division to carry out the enforcement of this act. Furthermore,
51 the division of insurance shall create and make available forms for reporting such violation of
52 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-five per cent of those claims where the appraisal
57 indicates that the cost of repairs will be four thousand dollars or less, a licensed auto damage
58 appraiser shall re-inspect the vehicle following completion of repairs and shall certify on the
59 claim form that the work has been completed in accordance with an appraisal made pursuant to
60 said regulations” and inserting in place thereof the following words:— provided, however, that
61 the commissioner may establish requirements for re-inspection by licensed damage appraisers
62 during or following the completion of repairs. In cases where a completed work claim form is
63 required, a licensed auto damage appraiser, which may include a repair shop appraiser, shall
64 certify that the work has been completed in accordance with an appraisal or repair order.

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

68 SECTION 6: The 18th paragraph of said section 34O of said chapter 90, as so appearing, is
69 hereby 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
71 chapter 100A of the General Laws which are located in the county where the insured resides,
72 which shall be arranged in alphabetical order according to city or town, with no highlights,
73 asterisks, underlining, font size differences or phone number or any other form of identification
74 to indicate that any repair shop is a referral shop or referral repair facility. Insurers shall also
75 provide a written disclosure, approved by the commissioner, to the insured of their rights and
76 shall not guarantee or warrant the quality of repairs at any repair facility.

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

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

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

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

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

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

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

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

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

119 metal inert gas welding equipment, or its equivalent; (4) proper equipment and permits, or an
120 identified contracted source having proper equipment and permits, for the evacuation of motor
121 vehicle air-conditioning systems; (5) proper equipment, or an identified contracted source having
122 proper equipment, for motor vehicle frame and unibody repair and measuring; and (6) proper
123 equipment, or an identified contracted source having proper equipment, for performing motor
124 vehicle wheel alignment.

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

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

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

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

139 100A:11 Auto glass replacement and/or repair or rental and replacement vehicle transactions
140 and services; 3rd party billing limitations

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

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

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

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

157 The commissioner of the division of insurance shall promulgate rules and regulations for the
158 administration and enforcement of this section. Each violation resulting in a failure to file either
159 the statement of ownership and/or agreements between insurance companies and third-party
160 billers shall result in a fine of \$5,000.00 per incident.. The fine shall be collected by the Division
161 of Insurance and deposited in a retained revenue account to be used by the division to carry out

162 the enforcement of this act. Furthermore, the division of insurance shall create and make
163 available forms for reporting such violation of this section.

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

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

171 100A:12 Auto glass replacement and/or repair or rental and replacement vehicle transactions
172 and services; restrictions

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

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

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

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

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

197 SECTION 15: Section 113O of chapter 175 of the General Laws, as so appearing, is hereby
198 amended by striking out, in lines 75 to 85, the words “provided, however, that for at least
199 seventy-five per cent of those claims where the appraisal indicates that the cost of repairs will
200 exceed four thousand dollars and at least twenty-five per cent of those claims where the appraisal
201 indicates that the cost of repairs will be four thousand dollars or less, a licensed auto damage
202 appraiser shall re-inspect the vehicle following completion of repairs and shall certify on the
203 claim form that the work has been completed in accordance with an appraisal made pursuant to
204 said regulations” and inserting in place thereof the following words:— provided, however, that

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

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

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

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

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

227 made, in any specified repair facility or facilities, unless otherwise permitted by this section or
228 by section or section 8G of chapter 26 and by section 34O of chapter 90.

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

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