

HOUSE No. 1006

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 The commissioner shall instruct the bureau to conduct a market conduct study of the direct payment and
4 referral repair shop plans by motor vehicle insurers no less than every three years with an initial study no
5 later than December 31, 2009. 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 34O of chapter 90
9 subsection (b) of the General Laws and 211 CMR 123, 211 CMR 133 and 212 CMR 2.00. Said study
10 shall report the results of such investigation and study and its recommendations, if any, together with
11 drafts of legislation to the joint committee on financial services.

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

14 No appraiser or employees of an independent appraisal company, insurance company or any of its
15 employees or representatives shall require, suggest, request, or recommend that any appraisals or repairs
16 should or should not be made in a specified registered repair facility or facilities authorized under section
17 34O of chapter 90 or otherwise, nor shall an appraiser or employees of an independent appraisal
18 company, insurance company or any of its employees or representatives use coercion or intimidation to
19 cause appraisals or repairs to be made or not made, in any specified repair facility or facilities. The
20 commissioner of the division of insurance shall promulgate rules and regulations for the administration
21 and enforcement of this section. An insurance company, third party biller, agent or adjuster for such
22 insurance company violating this section shall be punishable by a fine of not less than \$300.00 nor more
23 than \$500.00 for each incident. The fine shall be collected by the Division of Insurance and deposited in

24 a retained revenue account to be used by the division to carry out the enforcement of this
25 act. Furthermore, the division of insurance shall create and make available forms for reporting such
26 violation of this section.

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

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

48 SECTION 4: Section 34O of chapter 90 of the General Laws, as so appearing, is hereby amended by
49 striking out, in lines 191 to 198, the words “provided, however, that for at least seventy-five per cent of
50 those claims where the appraisal indicates that the cost of repairs will exceed four thousand dollars and at
51 least twenty-fiver per cent of those claims where the appraisal indicates that the cost of repairs will be
52 four thousand dollars or less, a licensed auto damage appraiser shall re-inspect the vehicle following
53 completion of repairs and shall certify on the claim form that the work has been completed in accordance
54 with an appraisal made pursuant to said regulations” and inserting in place thereof the following words:—
55 provided, however, that the commissioner may establish requirements for re-inspection by licensed
56 damage appraisers during or following the completion of repairs. In cases where a completed work claim
57 form is required, a licensed auto damage appraiser, which may include a repair shop appraiser, shall
58 certify that the work has been completed in accordance with an appraisal or repair order.

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

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

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

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

72 (c) No appraiser or employees of an independent appraisal company, insurance company or any of its
73 employees or representatives, shall require, suggest, request, or recommend that any appraisals or repairs
74 should or should not be made in a specified registered repair facility or facilities authorized under section
75 34O of chapter 90 or otherwise, nor shall an appraiser or employees of an independent appraisal
76 company, insurance company or any of its employees or representatives use coercion or intimidation to
77 cause appraisals or repairs to be made or not made, in any specified repair facility or facilities.

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

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

87 SECTION 9: Section 2 of chapter 100A of the General Laws, as so appearing, is hereby amended by
88 striking out, in line 17, the words “ten thousand” and inserting in place thereof the following figure:—
89 25,000

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

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

96 Any motor vehicle repair shop applying for a certificate of registration under the current chapter is
97 required to have all local, state, and federal licenses and permits including a state sales tax identification
98 number, a federal tax identification number, and a hazardous waste or environmental protection agency
99 number. Every shop is required at all times to operate in accordance with the current environmental
100 protection agency compliance regulations, current occupational safety and health administration

101 regulations, and to comply with all state and local fire and electrical codes and must provide proof of
102 compliance upon request.

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

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

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

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

124 SECTION 13: Section 113O of chapter 175 of the General Laws, as so appearing, is hereby amended by
125 striking out, in lines 75 to 85, the words “provided, however, that for at least seventy-five per cent of
126 those claims where the appraisal indicates that the cost of repairs will exceed four thousand dollars and at
127 least twenty-fiver per cent of those claims where the appraisal indicates that the cost of repairs will be
128 four thousand dollars or less, a licensed auto damage appraiser shall re-inspect the vehicle following
129 completion of repairs and shall certify on the claim form that the work has been completed in accordance
130 with an appraisal made pursuant to said regulations” and inserting in place thereof the following words:—
131 provided, however, that the commissioner may establish requirements for re-inspection by licensed
132 damage appraisers during or following the completion of repairs. In cases where a completed work claim
133 form is required, a licensed auto damage appraiser, which may include a repair shop appraiser, shall
134 certify that the work has been completed in accordance with an appraisal or repair order.

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

137 (a) that the insured or claimant will be given a single list of all repair shops registered under chapter 100A
138 of the General Laws which are located in the county where the insured resides, which shall be arranged in
139 alphabetical order according to city or town, with no highlights, asterisks, underlining, font size

140 differences or phone number or any other form of identification to indicate that any repair shop is a
141 referral shop or referral repair facility. Insurers shall also provide a written disclosure, approved by the
142 commissioner, to the insured of their rights and shall not guarantee or warrant the quality of repairs at
143 any repair facility.

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

146 (c) no appraiser or employees of an independent appraisal company, insurance company or any of its
147 employees or representatives shall require, suggest, request, or recommend that any appraisals or repairs
148 should or should not be made in a specified registered repair facility or facilities authorized under section
149 34O of chapter 90 or otherwise, nor shall an appraiser or employees of an independent appraisal
150 company, insurance company or any of its employees or representatives use coercion or intimidation to
151 cause appraisals or repairs to be made or not made, in any specified repair facility or facilities.

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

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