

The following comments are provided by the American Insurance Association (AIA), the National Association of Mutual Insurance Companies (NAMIC) and the Property Casualty Insurers of America (PCI)

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

**Proposed Substitute Amendment to Draft
Model Act Regarding ~~Insurer Auto-Body Steering~~Auto Repair Consumer Bill of Rights***

*To be considered by the NCOIL Property-Casualty Insurance Committee on July 10, 2010.
Sponsored for discussion by Sen. Ruth Teichman (KS)*

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Section 1. Short Title

This Act shall be known as the *Model Act Regarding ~~Insurer Auto-Body Steering~~Auto Repair Consumer Bill of Rights*

Section 2. Summary

This Act applies to personal lines motor-vehicle insurance policies, provides for consumer choice in selection of a repair facility, mandates certain disclosures, and establishes violations as unfair claims settlement practices and unfair or deceptive trade practices.

Section 3. Definitions

For the purposes of this Act,

A. “Claimant” means an individual other than an insured who requests payment under terms of the insured’s insurance policy.

B. “Consumer” means an individual who owns a motor vehicle.

CB. “Insured” means the party named on a policy as the individual with legal rights to the benefits provided by the policy.

DC. “Insurer” means an insurance company and/or any person authorized to represent the insurer with respect to a claim and who is acting within the scope of the person’s authority.

~~E~~D. “Policy” means a contract issued for private motor-vehicle insurance that is individually underwritten for personal, family, or household use.

~~F~~E. “Preferred repair facility” means a repair facility that meets an insurer’s customer service and repair standards and is contractually or by agreement part of an insurer’s direct repair program~~[A1]~~

~~G~~. “Auto Body Repair Facility~~Repair facility~~” means a motor vehicle dealer, garage, body shop, or other commercial entity that undertakes the repair or of a motor vehicle or replacement of motor vehicle parts.

Section 4. Selection of Repair Facility, Insurer Prohibitions

An insurer authorized to do business in *[insert state]* shall not:

A. require an insured or claimant to utilize preferred repair facilities as a prerequisite to settling or paying any claim arising under a policy or policies of insurance. An insurer may recommend a repair facility prior to an insured or claimant choosing one

Comment: Under this language policyholders who have not selected a repair shop are provided information and benefits that insurers are not allowed to share with those policyholders who have not selected a repair facility. This is a form of discrimination. All policyholders should be entitled to information that may benefit them. (Comment: The language in section E should address; the situation, the insurer can explain the program, and ask if the consumer wants a referral)

B. engage in any act of coercion or intimidation causing or intended to cause an insured or claimant to utilize a preferred repair facility. Information provided to the insured or claimant by the insurer per Section 4 E shall not be considered acts of coercion or intimidation.; provided that benefits provided to the insured or claimant by the insurer shall not be considered acts of coercion or intimidation.

C. recommend a repair facility once an insured or claimant has advised the insurer that one has been selected, or interfere with the insured or claimant’s selection once it has been made Comment: Under this language policyholders who have not selected a repair shop are provided information and benefits that insurers are not allowed to share with those policyholders who have selected a repair facility. This is a form of discrimination. All policyholders should be entitled to information that may benefit them. Insurers have a constitutional right to explain their programs and ensure customers are fully informed as to their options. The customer is best served by having access to information about options to ensure that the market operates in a competitive environment. This requirement could limit the customer from being aware of benefits they may gain with a direct repair facility, up to and including a warranty or guaranty of repairs. Though the customer may have a shop in mind, once they are aware of the benefits of a direct repair facility, they may prefer to go to that facility because of these additional benefits.

D.

pay a non-preferred repair facility selected by an insured or claimant less to complete a repair than the insurer would have paid a preferred repair facility for the same work unless the non-preferred repair facility accepts a lower price

Comment: If not amended, this subsection enables price controls and will undermine the current competitive environment. In fact, it may actually drive out the “non-preferred” repair facility that is trying to be competitive. In the alternative, it provides a state-subsidized support for inefficiency among repair facilities.

E. Notwithstanding anything in this Section to the contrary, nothing in this section shall restrict an insurer’s ability to provide any claimant or insured with specific information regarding the services and benefits of the claims process. This information may include, but not be limited to, warranties, replacement parts, turn around time, workmanship and costs

Section 5. Selection of Repair Facility, Repairer Facility Prohibitions

A. —A repair facility authorized to do business in *[insert state]* shall not:

1. solicit a person involved in an auto accident within 72 hours of the occurrence of the accident
2. engage in any act of deception, coercion or intimidation causing or intending to cause a person involved in an auto accident to utilize a certain repair facility
3. advertise or provide any rebate or waiver of an insurance deductible
4. charge for any products or services that were not actually provided, including but not limited to charging for original equipment parts when non-original equipment parts or salvage parts were installed, billing for labor not actually provided to perform the repairs, charging for parts not actually replaced
5. restrict the vehicle owner, or insurer from access to vehicle while in possession of the repair facility
6. charge storage fees for vehicles on the repair facility premises for days when the repair facility is not open for business
7. seek a power of attorney from a person involved in an auto accident for the repair of the vehicle
8. refuse to provide the insurer with an invoice for all parts and supplies used, and labor incurred, on the repair

B. any violation of this Section 5 shall be a class *[insert appropriate class]* —misdemeanor and a violation of the Unfair and Deceptive Trade Practices Act *[or other comparable state law]*

Section 6. Disclosure

An insurer authorized to do business in this state shall disclose to an insured or claimant, at such time as the insurer or its third-party representative recommends use of a preferred repair facility, that:

- A. the insured or claimant is under no obligation to use the preferred repair facility
- B. the insurer or its third-party representative has an ownership interest in such facility, if such

an interest exists

Section 67. Violations and Penalties

A. The [*insert name of insurance regulatory agency*~~*appropriate state agency*~~] shall investigate, with the written authorization of the _____insured or claimant, any written complaints regarding insurers received pursuant to this Act.

B. The [*insert appropriate state agency*] shall investigate, with the written authorization of the insured or claimant, any written complaints regarding repair facilities received pursuant to this Act.

CB. Violations of Sections 4 and 6 of this Act shall constitute [*insert state*] unfair claims settlement practices and _____shall be subject to applicable state fines and penalties.

Section 87. Effective Date

This Act shall take effect on [*insert date*], applying to personal lines motor-vehicle insurance policies either written to be effective or renewed on or after nine-eighteen (189) months from the effective date of the bill.

* *Based on Rhode Island and Virginia statutes*

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