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CHAPTER 273
MOTOR VEHICLE INSURANCE—PREMIUMS—REGULATIONS

AN ACT relative to motor vehicle insurance.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately regulate automobile insurance premiums, therefor it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. It is hereby found and declared:

That the purpose of this act is to restructure the automobile insurance system so as to provide residents of the commonwealth with effective automobile insurance protection at rates which are adequate, just, reasonable and nondiscriminatory. It is the intention of the legislature that the provisions of this act should result in future savings to consumers similar to those which would have occurred if this act had been in effect in nineteen hundred and eighty-eight. In particular, the legislature anticipates that the automobile insurance rates fixed and established by the commissioner of insurance for nineteen hundred and eighty-nine will reflect at least the following approximate savings from otherwise determined rates as a result of the changes prescribed by the indicated sections:

Three per cent savings attributable to the increase in the tort threshold to two thousand dollars and the personal injury protection benefits to eight thousand dollars, in sections fifteen and fifty-five;

Two per cent additional savings attributable to making underinsured coverage optional, in section forty-six;

Two per cent additional savings attributable to changing the “trigger” for compulsory and non-compulsory underinsured coverages, also in section forty-six;

Two per cent additional savings attributable to the prohibition on “stacking” underinsured coverages in separate policies, in section forty-seven;

Two per cent additional savings attributable to increasing the standard deductible for collision and comprehensive coverage to five hundred dollars, with a three hundred dollar minimum, in sections twenty and forty-eight;

Four per cent additional savings attributable to permitting insurance companies to pay consumers directly for automobile damage repairs and to refer consumers to automobile repair shops, in sections twenty-four, and fifty-one;

One half of one per cent additional savings attributable to creating an optional deductible of one hundred dollars for glass damage, in section fifty;

One half of one per cent additional savings for safe drivers attributable to increased surcharges for bad drivers, pursuant to section thirty-eight;

One tenth of one per cent additional savings attributable to increasing penalties for uninsured drivers, in section fifty-six.

MA ST 6 § 183A

SECTION 2. Chapter 6 of the General Laws is hereby amended by inserting after section 183 the following section:—

Section 183A. There is hereby established a Massachusetts cost containment council, hereinafter called the council. The council shall consist of the following persons or their designees: the secretary of consumer affairs, who shall serve as chairman, the commissioner of insurance, the secretary of public safety, the registrar of motor vehicles, the commissioner of

the state police, the secretary of transportation and construction, the commissioner of public works, the attorney general, the president of the association of district attorneys, the executive director of the governor's statewide anti-crime council, the chief administrative justice of the trial court, the executive director of the judicial institute, and the commissioner of probation. The council shall annually formulate and administer a plan that, at a minimum, shall include performance standards for reductions in motor vehicle insurance fraud, motor vehicle thefts, motor vehicle arson, motor vehicle accident frequency and severity, and the number of uninsured motorists. The council is hereby authorized and directed to stimulate activities, develop proposals and increase inter-agency cooperation for the purpose of implementing said plan.

The projects undertaken or originated by the council shall include but shall not be limited to the following: improvement, expansion and coordination of safe driver education for residents of the commonwealth when they obtain and renew licenses, purchase automobile insurance, and are charged with or convicted of offenses pertaining to unsafe driving; improvement of the content of and appropriate expansion of access to information needed to enforce automobile theft and fraud laws, including accident reports, theft reports, automobile arson reports, criminal histories, automobile titles and certificates of origin, and suspicious insurance claims; development of sentencing guidelines and model sentencing recommendations for offenses pertaining to unsafe driving and automobile theft and fraud in order to increase the certainty of punishment for these crimes, either through incarceration or through alternative sentences such as mandatory driver education or electronic monitoring, as appropriate; training of judges concerning the relevant provisions of this act, including appropriate case management techniques; training of registry of motor vehicles and law enforcement personnel in relevant law enforcement techniques, such as identification of stolen automobiles, recognition of forged title and registration documents, and identification of potential fraud in accident reports and other documents; and public awareness campaigns concerning the prevention of automobile theft.

The council shall annually on or before November first inform the general court of its activities by filing a report with the clerk of the senate, who shall forward said report to the senate and house committees on ways and means and the joint committee on insurance. Said report shall state the reductions in motor vehicle insurance cost factors realized by the programs and projects set forth in the council's annual plan and shall include any recommendations deemed necessary by the council for legislation needed to improve future performance.

MA ST 26 § 8G

SECTION 3. Section 8G of chapter 26 of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by striking out the sixth paragraph and inserting in place thereof the following paragraph:—

Applications for registration as licensed motor vehicle damage appraisers signed and sworn to by the applicants, shall be made upon forms furnished by the board. Each applicant who shall furnish the board with satisfactory proof that he is eighteen years of age or over and of good moral character, that he possesses the educational qualifications required for graduation from high school or that he possesses relevant work experience deemed satisfactory by the board, shall, upon payment of fifty dollars, be examined, and if found qualified by the board, be registered as a licensed appraiser of motor vehicle physical damage and entitled to a numbered certificate in testimony thereof, signed by the chairman of the board. An applicant failing to pass an examination satisfactory to the board, shall, after payment of a further fee of twenty-five dollars, be entitled to a reexamination after the expiration of six months from the date of the last examination.

MA ST 90 § 24H

SECTION 4. The first paragraph of section 24H of chapter 90 of the General Laws, as so appearing, is hereby amended by striking out the third sentence.

MA ST 90 § 24H

SECTION 5. The second paragraph of said section 24H of said chapter 90, as so appearing, is hereby amended by striking out the second sentence.

MA ST 90 § 24H

SECTION 6. The third paragraph of said section 24H of said chapter 90, as so appearing, is hereby amended by striking out the first sentence.

MA ST 90 § 24H

SECTION 7. The second sentence of said third paragraph of said section 24H of said chapter 90, as so appearing, is hereby amended by striking out, in line 25, the words “, along with the vehicle identification plates,”.

MA ST 90 § 25

SECTION 8. Section 25 of said chapter 90, as so appearing, is hereby amended by striking out, in line 18, the words “not less than twenty-five nor more than”.

MA ST 90 § 30A

SECTION 9. Section 30A of said chapter 90, as so appearing, is hereby amended by inserting after the word “plan”, in line 9, the words:— and for the purpose of complying with the requirements of sections one A, thirty-four A, thirty-four B and thirty-four H pertaining to motor vehicle liability policies.

MA ST 90 § 30B

SECTION 10. Said chapter 90 is hereby further amended by inserting after section 30A the following section:—
Section 30B. The secretary of public safety is hereby authorized and directed to enter into a compact on behalf of the commonwealth with any other jurisdiction legally joining therein in the form substantially as follows:

(I) (a) “State” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) “Home State” means the state that has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) “Conviction” means a conviction of any offense related to the use or operation of a motor vehicle that is prohibited by state law, municipal ordinance, or administrative rule or regulation; or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

(II) The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the security; and shall include any special findings made in connection therewith.

(III) (a) The licensing authority in the home state, for the purposes of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to subsection II as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug, or under the influence of any other drug to a degree that renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(b) As to other convictions, reported pursuant to subsection II, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state;

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this subsection, such party state shall construe the denominations and descriptions appearing in the subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this subsection.

(IV) Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of, a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation; and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and current ¹ in force unless the applicant surrenders such license.

(V) Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

(VI) (a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or

documents reasonably necessary to facilitate the administration of this compact.

(VII) (a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

(VIII) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable; and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as the remaining states and in full force and effect as to the state affected to all severable matters.

(IX) As used in the compact, the term “licensing authority” with reference to this state shall mean the registrar of motor vehicles. Said registrar shall furnish to the appropriate authorities of any party state any information or documents reasonably necessary to facilitate the administration of subsections II, III and IV of the compact.

(X) The compact administrator provided for in subsection VI of the compact shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as administrator, in the same manner, as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

(XI) As used in the compact, with reference to this state, the term “executive head” shall mean the governor.

(XII) Any court or any other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking or otherwise limiting a license to drive, shall report any such action and the adjudication upon which it is based to the registrar within fourteen days on forms approved by the registrar.

¹ So in original.

MA ST 90 § 34A

SECTION 11. Section 34A of said chapter 90, as so appearing, is hereby amended by striking out, in lines 54 and 97, the word “ten” and inserting in place thereof, in each instance, the word:— fifteen.

MA ST 90 § 34A

SECTION 12. Said section 34A of said chapter 90 is hereby further amended by striking out the word “fifteen”, inserted by section 11 of this act, and inserting in place thereof the word:— twenty.

MA ST 90 § 34A

SECTION 13. Said section 34A of said chapter 90, as appearing in the 1986 Official Edition, is hereby further amended by striking out, in lines 56 and 99, the word “twenty” and inserting in place thereof, in each instance, the word:— thirty.

MA ST 90 § 34A

SECTION 14. Said section 34A of said chapter 90 is hereby further amended by striking out the word “thirty”, inserted by section 13 of this act, and inserting in place thereof the word:— forty.

MA ST 90 § 34A

SECTION 15. The definition of “Personal injury protection” in said section 34A of said chapter 90, as appearing in the 1986 Official Edition, is hereby amended by striking out, in line 155, the word “two” and inserting in place thereof the word:— eight.

MA ST 90 § 34A

SECTION 16. Said definition of “Personal injury protection” in said section 34A of said chapter 90, as so appearing, is hereby further amended by adding the following paragraph:—

Notwithstanding the foregoing, personal injury protection provisions shall not provide for payment of more than two thousand dollars of expenses incurred within two years from the date of accident for medical, surgical, X-ray and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services if, and to

the extent that, such expenses have been or will be compensated, paid or indemnified pursuant to any policy of health, sickness or disability insurance or any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services. No policy of health, sickness or disability insurance and no contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services, shall deny coverage for said expenses because of the existence of personal injury protection benefits. Notwithstanding the provisions of section seventy A of chapter one hundred and eleven of the General Laws, no entity which is the source of the provision, payment or reimbursement of said expenses shall recover any amount against the claimant nor shall it be subrogated to the rights of the claimant for more than two thousand dollars of personal injury protection benefits, nor shall it have a lien against the claimant's personal injury protection benefits on account of its provision payment of reimbursement of said expenses. Within two years from the date of the accident, if the claimant has a policy of insurance which provides health benefits or income disability coverage, and the claimant is unwilling or unable to pay the costs of renewing or continuing that policy of insurance in force, the insurer providing personal injury protection coverage to the claimant may tender to the claimant the cost of maintaining the said policy in force for the two year period. Upon receipt of such tender, the claimant shall continue such policy of insurance; or an equivalent policy in force for the two year period. Nothing in this subsection shall be construed to compel a claimant to renew or maintain any policy of insurance in force prior to receipt of the said tender, or to interfere in any way with the claimant's choice of physician or course of medical treatment.

MA ST 90 § 34J

SECTION 17. Section 34J of said chapter 90, as so appearing, is hereby amended by striking out, in lines 5 and 6, the words "three hundred dollars nor more than one thousand five hundred" and inserting in place thereof the words:—five hundred nor more than five thousand.,—and by striking out, in lines 10 and 11, the words "two hundred dollars of any".

MA ST 90 § 34J

SECTION 18. Said section 34J of said chapter 90, as so appearing, is hereby further amended by adding at the end thereof the following two paragraphs:—

In proceedings under this section, written certification by the registrar of motor vehicles that the registry of motor vehicles has no record of a motor vehicle liability policy or bond or deposit in effect at the time of the alleged offense as required by the provisions of this chapter for the motor vehicle alleged to have been operated in violation of this section, shall be admissible as evidence in any court of the commonwealth and shall raise a rebuttable presumption that no such motor vehicle liability policy or bond or deposit was in effect for said vehicle at the time of the alleged offense. Such presumption may be rebutted and overcome by evidence that a motor vehicle liability policy or bond or deposit was in effect for such vehicle at the time of the alleged offense.

Any person who is convicted of, or who enters a plea of guilty to a violation of this section shall be liable to the plan organized pursuant to section one hundred and thirteen H of chapter one hundred and seventy-five in the amount of the greater of five hundred dollars or one year's premium for compulsory motor vehicle insurance for the highest rated territory and class or risk in effect at the time of the commission of the offense. Said liability shall be in addition to all other liabilities imposed on the person so convicted or so pleading whether civil or criminal. The said plan shall apply any sums collected hereunder, to defray its costs of collection and to defray in whole or in part its expenses for preventing fraud and arson. Furthermore, any person who is convicted of, or enters a plea of guilty to a violation of this section shall have his or her license or right to operate a motor vehicle suspended for sixty days by the registrar of motor vehicles upon the registrar's receipt of notification from the clerk of any court which enters any conviction hereunder or which accepts such plea of guilty. The clerk of any court which enters any conviction hereunder or which accepts such plea shall promptly notify the registrar of motor vehicles and the Commonwealth Auto Reinsurers pursuant to section one hundred and thirteen of chapter one hundred and seventy-five or any successor thereto of such entry of acceptance of such plea. For any second or subsequent said conviction or plea of guilty within a six year period the offender's license or right to operate a motor vehicle shall be suspended for one year by the registrar upon the registrar's receipt of such notification by the clerk of any such court.

MA ST 90 § 34M

SECTION 19. The sixth paragraph of section 34M of said chapter 90, as so appearing, is hereby amended by striking out, in line 107, the words "or two thousand dollars" and inserting in place thereof the words:— , two thousand dollars, four thousand dollars or eight thousand dollars.

MA ST 90 § 34 O

SECTION 20. Section 34 O of said chapter 90, as so appearing, is hereby amended by striking out, in lines 30, 57 and 99, the word "three" and inserting in place thereof, in each instance, the word:— five,— and by striking out, in line 100, the word

“one” and inserting in place thereof the word:— three.

MA ST 90 § 34O

SECTION 21. The sixth paragraph of said section 34O of said chapter 90, as so appearing, is hereby amended by adding the following sentence:— The charge for said additional coverage shall not exceed the actuarial cost of reducing the deductible from five hundred dollars to three hundred dollars.

MA ST 90 § 34O

SECTION 22. Said section 34O of said chapter 90, as so appearing, is hereby further amended by inserting after the sixth paragraph the following paragraph:—

The insurer may require a deductible of five hundred dollars on collision and limited collision coverage for any policyholder after a major at-fault accident as determined by the commissioner of insurance and on record with the motor vehicle insurance merit rating board established pursuant to section one hundred and eighty-three of chapter six; provided, however, that no insurer may require such increased deductible for any such accident occurring on or before August first, nineteen hundred and eighty-eight; and provided, further, that no such increased deductible may be required for more than three policy years following the date of such accident.

MA ST 90 § 34O

SECTION 23. Said section 34O of said chapter 90, as so appearing, is hereby further amended by striking out the eighth paragraph and inserting in place thereof the following paragraph:—

Insurers shall also make available to all policyholders at their option deductible amounts of one thousand dollars. The insurance commissioner may approve or require other optional deductible amounts in excess of five hundred dollars.

MA ST 90 § 34O

SECTION 24. Said section 34O of said chapter 90, as so appearing, is hereby further amended by striking out the tenth paragraph and inserting in place thereof the following paragraphs:—

No insurer shall make any payments to the insured under collision coverage or limited collision coverage policies unless it has received a claim form from the insured stating that the repair work described in an appraisal made pursuant to regulations promulgated by the auto damage appraisers licensing board has been completed, except for payments made in accordance with a plan filed and approved pursuant to the following paragraph. In any case where the insurer fails to make payment within seven days of receipt of the above claim form, the insured may commence a civil action for payments claimed to be due. If the court determines that the insurer was unreasonable in refusing to pay said insured's claim, the claimant shall be entitled to recover double the amount of damage plus costs and reasonable attorneys' fees fixed by the court. If such claim form is not received by the insurer, the insurer shall pay to the insured only the decrease in actual value of the insured vehicle less any deductible. If the insured elects not to repair the vehicle, or if the insurer does not receive a claim form from the insured stating that the repair work has been completed, the insurer shall decrease the actual cash value of the insured vehicle by the amount of damage sustained. Said claim form shall indicate as to whether the insured is current or not current in the payment of his automobile insurance premiums. The insurer shall be required to make payment directly to the repair shop within seven days of receipt of the claim form stating that the work has been completed if the insured has so indicated to the insurer in writing. Receipt by registered mail shall be sufficient proof of receipt. Failure to so make payment within seven days to the repair shop shall result in penalties being imposed against the insurer as established by the board.

Notwithstanding the previous paragraph or any other law, an insurer may file a plan for approval by the commissioner providing for direct payment by the insurer to the insured for the loss of or damage to the insured motor vehicle under collision coverage or limited collision coverage policies prior to receipt by the insurer of a claim form from the insured stating that the repair work described in an appraisal made pursuant to regulations promulgated by the auto damage appraisers licensing board has been completed. Such plan shall not be approved unless it: (a) provides for a procedure acceptable to the commissioner to resolve any dispute between the insured and the insurer as to the adequacy of the payment; (b) provides for adequate disclosure to the insured of his or her rights hereunder; and (c) contains such other terms and conditions as the commissioner shall prescribe.

The commissioner may revoke approval for such a plan if he determines that the insurer is not complying with its terms or that the plan does not carry out the purposes of this section. If an insured under collision coverage or limited collision coverage, so called, elects not to repair an insured vehicle for which a claim payment has been made under one of said coverages or if the insurer does not receive a claim form from the insured certifying that the repair work has been done in accordance with an appraisal made pursuant to regulations promulgated by the auto damage appraisers licensing board, then the insurer and any successor insurer shall decrease the actual cash value of the insured vehicle by the amount of the claim payment plus any applicable deductible until such time as the insurer or any successor insurer receives a claim form with the

certification described above, provided, however, that for at least seventy-five per cent of those claims where the appraisal indicates that the cost of repairs will exceed four thousand dollars and at least twenty-five per cent of those claims where the appraisal indicates that the cost of repairs will be four thousand dollars or less, a licensed auto damage appraiser shall reinspect the vehicle following completion of repairs and shall certify on the claim form that the work has been completed in accordance with an appraisal made pursuant to said regulations. The commissioner shall hold a hearing prior to approval of any such plan or plans. The commissioner shall have the authority to promulgate such rules and regulations as he deems necessary for the implementation of this paragraph.

The commissioner may require any plan filed pursuant to the preceding paragraph to provide (a) that the insured will be given a list of at least five registered repair shops, geographically convenient for the insured, from which the insured may at his or her option select a shop, which will without undue delay complete the repair work for the amount of the payment to the insured, plus any applicable deductible, that the insurer will guarantee the quality of the materials and workmanship used in making repairs if the repairs are performed at one of the repair shops so listed;

(b) that in no event shall the selection of vehicles for reinspection be based on the age or sex of the policyholder or of the customary operators of the vehicle, or on the principal place of garaging the vehicle; and

(c) that no insurer or appraiser shall require that repairs to any motor vehicle be made at any specific repair shop, or list of repair shops; and

(d) that in determining which repair shops will be listed as described above, the insurer shall consider only the quality and cost of repairs at a particular shop, the quality of the service given the customer, the responsiveness of the shop to customers' needs, the ability of the shop to perform repairs without undue delay, the geographic convenience of the shop for the insured, cooperation of the shop with pre- and post-repair inspections, and the shop's compliance with applicable laws and regulations. A repair shop shall be included on the list prepared by the insurer if the shop agrees in writing to comply in full with the plan filed by the insurer and approved by the commissioner. An insurer may strike a shop from the list provided it files a statement with the commissioner specifying the nature of the shop's failure to comply with the plan. Such plan shall include a fair and adequate procedure for relief for repair shops improperly stricken from such list; and

(e) no employee or agent of an insurer with responsibility for creating, managing or maintaining a list of repair shops as described above shall receive or ask for any payment, gift or other thing of value from any repair shop included, or seeking to be included, in the said list of repair shops, and no repair shop, or employee or owner thereof, shall give, pay or offer to give or pay any money or thing of value to any employee or agent of an insurer with responsibility for creating, managing or maintaining a list of repair shops. No repair shop, or employee, owner or agent thereof, shall give or pay, or offer to give or pay, any thing of value to any person in exchange for being included, or as an inducement to be included, on such a list of repair shops. For purposes of this paragraph, the words "employee", "owner" and "agent" shall also include any spouse or child of an employee, owner or agent. Violation of the provision of this paragraph may be grounds for revocation or suspension of any certificate of registration or license held under chapter one hundred A or chapter one hundred and seventy-five.

MA ST 90 § 34O

SECTION 25. The last paragraph of said section 34O of said chapter 90, added by chapter 189 of the acts of 1987, is hereby amended by striking out the first and second sentences and inserting in place thereof the following two sentences:— Notwithstanding the provisions of subparagraphs (1) and (2) of the third paragraph, no insurer shall make payments to any repair shop located in the commonwealth for repairs to a motor vehicle under the collision and limited collision provisions of this section, unless such repairs have been made in a repair shop that certifies that it (a) is a registered motor vehicle repair shop under chapter one hundred A; (b) is owned by or has in its employ a person licensed to appraise motor vehicle collision damage pursuant to section eight G of chapter twenty-six; (c) has in effect a policy of liability insurance for protection of its customers and their property; (d) has obtained a sales and use tax identification number pursuant to chapters sixty-four H and sixty-four I; (e) has filed notification of hazardous waste activity under chapter twenty-one C and the Federal Resource Conservation and Recovery Act and (f) maintains records of all parts purchased for use in the repair of motor vehicles during the preceding eighteen months on a uniform form as prescribed by the board established pursuant to section eight G of chapter twenty-six. Such repair shop shall certify on a completed work claim form that it meets these requirements and shall list its applicable license, registration and policy numbers on such form.

MA ST 90 § 34Q

SECTION 26. Said chapter 90 is hereby further amended by inserting after section 34P the following section:—

Section 34Q. Notwithstanding any general or special law, regulation or rule to the contrary, there is hereby authorized the insurance of liabilities incurred in the operation of motor vehicles by nonowner operators or in the operation of hired motor vehicles by endorsements in a general liability policy of insurance or by endorsements in a multi-peril policy of insurance, such endorsements to be distinct from, or in addition to, such endorsements presently authorized in statutory motor vehicle policies of insurance.

MA ST 90D § 1

SECTION 27. Section 1 of chapter 90D of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by inserting after the definition of "Supporting documents" the following definition:—

"Total loss salvage motor vehicle", a motor vehicle which has been stolen and unrecovered or which has been wrecked, destroyed or damaged by collision, fire, water, or other occurrence to such an extent that the owner or if the vehicle was insured, the insurer, considers it uneconomical to repair the vehicle and because of this, the vehicle is not repaired by or for the person who owned the vehicle at the time of the event resulting in such damage.

MA ST 90D § 17

SECTION 28. Section 17 of said chapter 90D, as so appearing, is hereby amended by striking out paragraph (d).

MA ST 90D § 20

SECTION 29. Said chapter 90D is hereby further amended by striking out section 20, as so appearing, and inserting in place thereof the following six sections:—

Section 20. (a) Whenever an insurer acquires ownership of a motor vehicle which it has determined to be a total loss salvage motor vehicle, it shall, within ten days from the date of acquisition, surrender the certificate of title to the registrar and shall apply for a salvage title.

(b) Whenever an insurer makes a total loss settlement on a vehicle which it has determined to be a total loss salvage motor vehicle and the insured owner or claimant retains possession and ownership of the vehicle, the insurer shall notify the registrar of such retention on a form prescribed by the registrar and the owner shall, within ten days of such settlement, surrender the certificate of title to the registrar and shall apply for a salvage title. The insurer shall notify the insured owner or claimant of said owner's or claimant's responsibility to comply with the provisions of this section.

(c) Whenever a motor vehicle which is not the subject of an insurance settlement is damaged to such an extent that the owner determines said vehicle to be a total loss salvage motor vehicle, the owner shall surrender the certificate of title to the registrar and shall promptly apply for a salvage title.

(d) A total loss salvage motor vehicle shall not be titled under this chapter or registered for operation under chapter ninety unless the owner complies with the provisions of section twenty D. The owner of a total loss salvage motor vehicle shall not transfer such vehicle except in accordance with section twenty C.

MA ST 90D § 20A

Section 20A. (a) The application for the salvage title shall be made by the owner to the registrar on such form or forms as the registrar shall prescribe and shall be accompanied by: (1) a properly assigned certificate of title; (2) any other information and documents the registrar may reasonably require to establish ownership of the vehicle and the existence or nonexistence of a lien; and (3) the required fee.

(b) The registrar shall file each application for salvage title received and maintain adequate record thereof and, when satisfied as to its genuineness and regularity, shall within two registry business days following the date of application, issue a salvage title. The salvage title shall serve as proof of ownership and shall contain the name and address of the owner, a description of the vehicle, a salvage certificate serial number and any other data the registrar prescribes.

MA ST 90D § 20B

Section 20B. (a) No salvage title need be obtained for: (1) a vehicle owned by the United States unless it is registered in accordance with the provisions of chapter ninety; (2) a vehicle moved solely by animal power; (3) an implement of husbandry; (4) special mobile equipment; (5) trailers; (6) passenger vehicles ten or more years old; or (7) mobile homes as defined in section thirty-two Q of chapter one hundred and forty.

MA ST 90D § 20C

Section 20C. (a) If an owner of a vehicle for which a salvage title has been issued under this chapter transfers his interest therein, he shall execute the assignment to the transferee on the space provided therefor on the salvage title or on such other form as the registrar shall prescribe and cause the title and assignment to be delivered to the transferee at the time of delivery of the vehicle.

(b) Except for dealers licensed under the provisions of section fifty-nine of chapter one hundred and forty, the transferee of a vehicle for which a salvage title has been issued under this chapter or under the laws, of another state shall, within ten days after receiving delivery of the total loss salvage vehicle, apply for a new salvage title on the form prescribed by the registrar. The application shall be accompanied by the properly executed salvage title, required fee and any other information and

documents the registrar may reasonably require to establish ownership of the vehicle.

(c) If a dealer, licensed under the provisions of section fifty-nine of chapter one hundred and forty, is a transferee of a vehicle for which a salvage title has been issued, he need not apply for a new salvage title but, upon transferring the vehicle, shall execute the assignment to the transferee in the space provided for such dealer assignments on the title on such form as the registrar prescribes and cause the title and assignment to be delivered to the transferee.

(d) Any transferor of a vehicle for which a salvage title has been issued under this chapter shall fully and fairly disclose that fact to any transferee for value. The secretary of consumer affairs and business regulation may by regulation provide for the timing, form and content of such disclosure.

(e) The registrar may issue a salvage title for any motor vehicle which is transferred into the commonwealth and which was previously covered by a similar title from any other state.

(f) The owner of any vehicle which would qualify as a "total loss salvage vehicle" under section one of chapter ninety D which is transferred into the commonwealth but was not covered by a similar title from another state shall apply for a salvage title from the registrar.

MA ST 90D § 20D

Section 20D. (a) Any owner who reconstructs or restores a total loss salvage motor vehicle to its operating condition which existed prior to the event which caused a salvage title to issue under this chapter or the laws of another state, or who recovers a total loss salvage motor vehicle if stolen, shall make application to the registrar for a certificate of title and an inspection of the vehicle prior to registration or sale of said vehicle. Each application for title and inspection shall be accompanied by the following:

(1) the outstanding salvage title previously issued for the salvage vehicle;

(2) bills of sale evidencing acquisition of all major component parts used to restore the vehicle, listing the manufacturer's vehicle identification number of the vehicle from which the parts were removed, if such part contained or should contain the manufacturer's vehicle identification number;

(3) the owner shall also provide a sworn affidavit in the form prescribed by the registrar which states that: (i) the identification numbers of the restored vehicle and its parts have not been removed, destroyed, falsified, altered or defaced; (ii) the salvage title document attached to the application has not been forged, falsified, altered or counterfeited; (iii) all information contained on the application and its attachments is true and correct to the knowledge of the owner; and

(4) the required inspection fee.

The inspection shall include an examination of the vehicle and its major component parts to determine that the vehicle's identification number or its parts have not been removed, falsified, altered, defaced, destroyed or tampered with, that the vehicle information contained in the application and supporting documents is true and correct, and that there is no indication that the vehicle or any of its parts are stolen. Said inspection shall be conducted by a person appointed under the provisions of section twenty-nine of chapter ninety. Such inspection is not for the purpose of checking road-worthiness or the safety condition of the vehicle. No liability shall be imposed upon the registrar of motor vehicles or upon the commonwealth or its agents or employees which may result from, or be connected with, any act or omission related to said inspection.

(b) Upon satisfactory inspection results, and receipt of all required documents and fees, the registrar shall issue a new certificate of title in the name of the owner which shall contain the notation "reconstructed", or if the vehicle was a stolen vehicle which was subsequently recovered in an undamaged condition, said certificate shall contain the notation "recovered theft vehicle".

MA ST 90D § 20E

Section 20E. (a) Any person who takes possession of a motor vehicle for the purpose of junking or scrapping shall within ten days after receipt of delivery, cause the certificate of title, salvage title or any other document required by the registrar as proof of ownership, to be surrendered to the registrar for cancellation. Said person shall maintain an adequate record of said cancellation which shall contain the name and address of the owner, a complete description of the vehicle including the vehicle identification number.

(b) The registrar shall maintain an adequate record of said cancellation, which shall contain the name and address of the owner, a complete description of the vehicle including the vehicle identification number. The vehicle identification number shall remain attached to said vehicle upon destruction.

(c) A motor vehicle for which the certificate of title, salvage title or any other document required by the registrar as proof of ownership, which has been surrendered for cancellation under this section shall not be titled under this chapter or registered to operate under chapter ninety.

MA ST 90D § 28, Cl. (1)

SECTION 30. Section 28 of said chapter 90D, as so appearing, is hereby amended by striking out clause (1) and inserting in place thereof the following clause:—

(1) For filing an application for a first certificate of title, a certificate of title after a transfer, or a salvage title.

MA ST 90D § 32

SECTION 31. Said chapter 90D is hereby further amended by striking out section 32, as so appearing, and inserting in place thereof the following section:—

Section 32. (a) Whoever falsely makes, alters, forges, or counterfeits a certificate of title or salvage title; or alters or forges an assignment of a certificate of title or salvage title, or supporting documents, or an assignment or release of a security interest on a certificate of title or a form the registrar prescribes; or has possession of or uses a certificate of title or salvage title, knowing it to have been altered, forged, or counterfeited; or uses a false or fictitious name or address, or makes a material false statement or fails to disclose a security interest, or conceals any other material fact, in an application for a certificate of title or salvage title; or supporting documents, shall be punished by a fine of not more than one thousand dollars or by imprisonment in the state prison for not more than five years, or in a jail or house of correction for not more than two years, or both.

(b) Whoever permits another not entitled thereto, to use or have possession of a certificate of title or salvage title or fails to mail or deliver a certificate of title, salvage title or application therefor to the registrar within ten days after the time required by this chapter, or whoever fails to deliver to the transferee or the registrar a certificate of title or salvage title within ten days after the time required by this chapter, or violates any other provision of the chapter, except as provided for in paragraph (a), shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars or by imprisonment in a jail or house of correction for not more than six months, or both.

MA ST 100A Prec. § 1

SECTION 32. The General Laws are hereby further amended by inserting after chapter 100 the following chapter:—

CHAPTER 100A.

MOTOR VEHICLE DAMAGE REPAIR SHOPS.

MA ST 100A § 1

Section 1. As used in this chapter, the following words, unless the context clearly requires otherwise, shall have the following meanings:

“Director”, the director of the division of standards in the executive office of consumer affairs, established by section eleven of chapter six A.

“Registered motor vehicle repair shop”, a motor vehicle repair shop which has a current valid certificate of registration issued hereunder.

“Motor vehicle repair”, the business or act of repairing damaged motor vehicles in the commonwealth for compensation.

“Motor vehicle repair shop”, any person or entity which, for compensation, or with the intention or expectation of receiving the same, repairs or undertakes to repair in the commonwealth a damaged motor vehicle as defined in section thirty-four A of chapter ninety.

“Person”, individuals, associations, partnerships and corporations, and the officers, directors and employees of a corporation.

“Unregistered motor vehicle repair shop”, a motor vehicle repair shop which does not have a current valid certificate of registration issued hereunder, which has had its registration revoked or suspended, or which has surrendered its certificate of registration hereunder.

MA ST 100A § 2

Section 2. Any person desiring to be registered as a motor vehicle repair shop shall make written application under oath to the director on a form provided by him. Said application shall set forth the name and address of the applicant and of any other person having financial interest, direct or indirect, in the business to be conducted by the applicant, and such other information as the director shall require, and shall identify at least one natural person who is in charge of the operations of the applicant. Said application shall be accompanied by a registration fee in the amount of one hundred dollars, or such other amount as the secretary of administration and finance pursuant to the provisions of section three B of chapter seven shall establish, together with two letters of recommendation for registration signed by a registered motor vehicle repair shop or by an elected public official or a member of the Massachusetts Bar. Said application shall be further accompanied by a bond upon the applicant in the sum of ten thousand dollars, payable to the director or his successors with sureties approved by the director and conditioned on applicant’s compliance with the provisions of this chapter. Said bond shall guarantee the payment of all fines and penalties incurred by applicant as a registered motor vehicle repair shop for his violations of the said provisions, and also guarantee the payment or satisfaction of any final judgments on claims by creditors against the registered motor vehicle repair shop arising in connection with business done under a certificate or registration granted under this chapter, all such payments under said bond to be limited to the amount of said bond. Such a creditor’s claim however, must

have been duly filed by giving written notice to the director prior to the expiration of sixty days from the return, surrender of said certificate of registration or date of the filing of an affidavit of loss of the certificate of registration held by the registered motor vehicle repair shop against whom the claim is made.

The acceptance by an applicant of a certificate of registration issued by the director to him as a registered motor vehicle repair shop shall be deemed equivalent to an appointment by the registrant of the director, or his successors in office, to be the registrant's true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him or his executor or administrator, arising out of the transaction of business by him under said certificate of registration. Any process against the registrant so served shall, if said registrant is notified as hereinafter provided, be of the same legal force and validity as if served on him personally, and the mailing by the director of a copy of such process to said registrant at his last address, as appearing on the director's records, shall be sufficient notice to him of such service. Service of such process shall be made by delivering or mailing duplicate copies thereof together with a fee of two dollars to the office of the director, and the director shall forthwith send one of said copies by mail, postage prepaid, addressed to the defendant registrant named in such process at his last address as appearing on the director's records.

An affidavit of the director, or of any person authorized by him to send such copy, that such copy has been mailed shall be prima facie evidence thereof. One of the duplicates of such process, certified by the director as having been delivered to the office of the director shall be sufficient evidence of service upon him as attorney for the registrant named as defendant in the process.

MA ST 100A § 2A

Section 2A. Notwithstanding the provisions of section two, the requirement of a bond may be satisfied by the submission of a letter of credit in the amount of ten thousand dollars, in a form approved by the director. Said letter of credit shall accompany the written application prescribed in section two and the applicant shall comply with all other requirements of said section.

MA ST 100A § 3

Section 3. No application for registration conforming to the requirements of section two shall be denied except after a public hearing held by the director in accordance with the subject to the conditions of chapter thirty A. No such application shall be denied except upon a finding by the director after said hearing of one or more of the following grounds for denial: (a) that the applicant or any person having a financial interest, direct or indirect, in the business to be conducted by the applicant, has been convicted within the most recent five year period from the date of the application of a felony which may reflect upon his suitability to own or operate; (b) that the applicant or any person having a financial interest, direct or indirect, in the business to be conducted by the applicant, has followed a continuous and flagrant course of misrepresentations or the making of false promises, through advertising or otherwise, in the conduct of motor vehicle repair or otherwise; (c) that the applicant, any person having a financial interest direct or indirect, in the business to be conducted by the applicant, or any registered or previously registered motor vehicle repair shop in which the applicant or such person has or had a financial interest, direct or indirect, has failed to meet or has violated any of the requirements for registered motor vehicle repair shops set forth in this chapter or (d) that the applicant, any person having a financial interest, direct or indirect, in the business to be conducted by the applicant, or any registered or previously registered motor vehicle repair shop in which the applicant or such person has or had a financial interest, direct or indirect, has had registration hereunder denied, revoked, suspended or surrendered during the previous five years. Upon denial of an application, the director shall surrender to the applicant the bond filed with his application within the time set forth, but shall not refund the registration fee.

MA ST 100A § 4

Section 4. Each certificate of registration issued by the director shall bear a number, shall be valid for one year from the date of its issuance, may be renewed upon application to the director on a form provided by him, shall not be transferable, and may be exercised only by the person whose name appears on the certificate; provided, however, that the registered motor vehicle repair shop may employ unregistered individuals to repair motor vehicles under the registrant's immediate direction and control.

MA ST 100A § 5

Section 5. Prior to its expiration date, a certificate of registration may be suspended or revoked by the director in accordance with the procedure and on the grounds set forth in section three or eight, or may be terminated by voluntary surrender by the registrant.

Upon the expiration, termination or surrender of a certificate of registration, the registrant shall deliver the certificate of registration to the director who shall cancel the registration, endorse the date of expiration, termination or surrender on the certificate and shall, after a sixty-day period from the date of delivery or after all claims made against the registrant have been satisfied or settled, surrender the registrant's bond and so notify the surety on the bond.

If a certificate of registration is lost, misplaced or destroyed, the registrant shall file an affidavit to that effect and the director shall issue a replacement certificate, clearly identified as such on the certificate and in the records of the director.

MA ST 100A § 6

Section 6. The director shall keep on file in convenient form and open to public inspection, all applications for registration and copies of certificates of registration issued and shall annually publish a list of names and addresses of all motor vehicle repair shops registered by him, and the names of all persons whose registration has been revoked, suspended or surrendered during the period and the specific time for which such suspension, revocation or surrender became effective.

MA ST 100A § 7

Section 7. Every registered motor vehicle repair shop shall publicly display in its place of business its current certificate of registration. No unregistered motor vehicle repair shop shall display in its place of business any certificate of registration or copy or facsimile of a certificate of registration, nor shall it in any manner state that it is, or hold itself out to be, a registered motor vehicle repair shop.

No unregistered motor vehicle repair shop shall undertake any repair of a motor vehicle without first giving notice to the owner of the motor vehicle, in writing, that it is an unregistered motor vehicle repair shop, that any repairs which it performs cannot be paid for by any motor vehicle insurer in the commonwealth, and that the owner of the vehicle can remove the vehicle from the premises of the unregistered motor vehicle repair shop within six business days after actual receipt of such notice without payment of any storage, repair or other charges to the unregistered motor vehicle repair shop. Any unregistered motor vehicle repair shop which fails to give such notice, timely and in writing, shall not have a lien on the motor vehicle for any charges claimed to be due it for storage, work and care in connection with any repair of the motor vehicle, notwithstanding the provisions of section twenty-five of chapter two hundred and fifty-five, nor shall it have any right claim or cause of action to collect any such charges from any person, whether in contract or quantum meruit or otherwise, notwithstanding any other law to the contrary.

MA ST 100A § 8

Section 8. No registered motor vehicle repair shop or other person shall: (a) advertise for motor vehicle repair in the commonwealth without including either the number of its certificate of registration issued by the director or the words "unregistered repair shop", as a part of the advertisement; (b) with respect to any repair paid for in whole or in part by an insurer, fail to charge all or any part of the applicable deductible to be paid by the insured, or give any rebate, gift, prize, premium, bonus, fee or any other monetary or tangible thing to the insured or any other person not in the employ of the repair shop as an inducement to have the repair made at the repair shop; (c) charge or offer to charge a higher rate or discount for an insured repair than for an uninsured repair; (d) make any false or fraudulent statement in connection with any repair or attempt to collect for a repair; (e) without lawful authority, prevent the owner of a motor vehicle from recovering the same.

MA ST 100A § 9

Section 9. (a) Every registered or unregistered motor vehicle repair shop shall keep, or cause to be kept, in a book a proper record of every motor vehicle which enters and which leaves his place of business. A proper record shall include, but not be limited to, a description of the motor vehicle, the vehicle identification number, the date received, the name and residences of the person from and for whom the vehicle was received and a signed authorization for the work to be performed on said vehicle. Records shall also be kept of purchases of all major component parts, motor transmission, any body parts and parts for the interior. Records must be kept of all purchases made during at least the preceding eighteen months.

(b) Any registered shop whose business consists primarily of the changing and replacing of the fluids of a motor vehicle shall be exempt from keeping the record book referred to above, if and so long as the registered shop keeps adequate records of the repairs and services performed with respect to the motor vehicles which come into its custody.

(c) Said record book shall be kept in a convenient place, and along with the premises of the repair shop or body shop, may be inspected at any time by any city, state or federal law enforcement officer.

MA ST 100A § 10

Section 10. Any person violating any of the provisions of this chapter may be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or both. Such fine may be imposed by the director, after hearing, or in a civil or criminal action brought by the attorney general. Violation of any of the provisions of this chapter shall constitute a violation of chapter ninety-three A.

MA ST 175 § 113B

SECTION 33. The first paragraph of section 113B of chapter 175 of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by striking out, in lines 1 and 2, the word "September" and inserting in place thereof the word:— December.

MA ST 175 § 113B

SECTION 34. Said first paragraph of said section 113B of said chapter 175, as so appearing, is hereby further amended by inserting after the fourth sentence the following sentence:— The commissioner shall direct the plan created under section one hundred and thirteen H to establish procedures for the implementation, monitoring and enforcement of programs to control costs and expenses identified by the commissioner in accordance with this paragraph, and shall report to the commissioner annually on the effectiveness of and the implementation by the various companies of the programs to control costs and expenses identified by the commissioner.

MA ST 175 § 113B

SECTION 35. Said section 113B of said chapter 175, as so appearing, is hereby amended by inserting after the first paragraph the following paragraph:—

In setting the claims frequency and cost trend and projection factors used to fix and establish classifications of risks and premium charges, the commissioner shall explicitly consider recent actual Massachusetts claims frequency, cost trend and loss data, and shall make express findings as to the claims frequency and cost trend and projection factors which such data would indicate for the respective coverages. He shall also consider such other evidence, argument and considerations as he finds credible and relevant. He shall justify the claims frequency and cost trend and projection factors which he uses with specific findings of fact and conclusions of law regarding all disputed material issues, and if the claims frequency, cost trend and projection factors which he uses materially deviate from the claims frequency, cost trend and projection factors derived from such recent Massachusetts data, he shall explicitly set forth the reasons therefor by making specific findings of fact and rulings, which shall justify such deviation and which shall be based on substantial evidence. For the purpose of evaluating any methodology proposed by a party to the rate hearing to be used for trending or projecting claims frequency or costs in setting the premium charges for the rate year in issue, if the commissioner makes specific findings that the same methodology was used in fixing and establishing premium charges in prior years in Massachusetts, a party may introduce into evidence the actual results caused by the use of that methodology in prior years.

MA ST 175 § 113B

SECTION 36. Said section 113B of said chapter 175, as so appearing, is hereby further amended by striking out the sixth and seventh paragraphs and inserting in place thereof the following paragraphs:—

In fixing and establishing classifications of risks, the commissioner may provide for appropriate reductions in the premium charges for the relevant coverages if he finds that vehicles are less damageable due to safety features incorporated into such vehicles or that the occupants of vehicles are less likely to suffer bodily injury due to safety features including, but not limited to, occupant crash protection devices, incorporated into such vehicles or that any optional policy provision will result in savings through reduced costs.

In fixing and establishing classifications of risks for comprehensive fire and theft coverage so-called to motor vehicles, the commissioner shall provide for appropriate reductions in the premium charges covering such vehicles if such vehicle is equipped with an anti-theft mechanism or device approved by the commissioner; provided that the commissioner shall establish a specific reduction of a minimum of twenty-five per cent in said premium charges for vehicles equipped with both an anti-theft mechanism or device and an auto recovery system.

In fixing and establishing classifications of risks for personal injury protection, uninsured and underinsured motorist protection, and medical payments coverages so-called, the commissioner shall provide for appropriate reductions in premium charges covering vehicles equipped with one or more air bags or a passive restraint device approved by the commissioner.

MA ST 175 § 113B

SECTION 37. Said section 113B of said chapter 175, as so appearing, is hereby further amended by inserting after the eighth paragraph the following paragraph:—

Said plan shall also take into consideration convictions reported to the registry of motor vehicles as the result of any compact entered into by the secretary of public safety for the exchange of information between states.

MA ST 175 § 113B

SECTION 38. Said section 113B of said chapter 175, as so appearing, is hereby amended by striking out the ninth and tenth paragraphs and inserting in place thereof the following three paragraphs:—

The safe driver insurance plan shall provide for a series of driver classifications based upon driving record which shall reflect individual driving experience. The plan shall provide for upward premium adjustments for drivers who in the preceding five year period have accumulated three or more unsafe driver points based on one or more of the following surchargeable incidents: at-fault accidents, convictions of moving violations of motor vehicle laws, including payments pursuant to chapter ninety C and assignments to driver alcohol education programs under the provisions of section twenty-four D of chapter ninety, or any combination thereof, or four or more comprehensive claims totalling two thousand dollars or more unless fire, theft, comprehensive and collision coverages are not purchased by the insured. Pursuant to such plan the commissioner may place drivers who have accumulated fewer than three unsafe driver points, so-called, into classifications for which an upward premium adjustment is provided.

There shall be a downward premium adjustment called an excellent driver award. The adjustment shall apply to every driver with no surchargeable incidents within the five years immediately preceding the applicable rate year. There shall also be larger adjustments made for drivers with no surchargeable incidents over such longer period or periods as the commissioner shall determine, and there may be such smaller adjustments for drivers with no surchargeable incidents over such shorter period or periods as the commissioner shall determine. The commissioner shall establish both the number of classifications, the size of the premium adjustments and initial classification assignment; provided, however, that the plan shall be designed so that the decrease in aggregate premiums attributable to the downward adjustments within the plan equals the increase in aggregate premiums attributable to the upward adjustments in the plan. Insureds who have accumulated three or more unsafe driver points within the five years immediately preceding the applicable rate year shall be placed in classifications for which the upward premium adjustment is actuarially sound. Nothing in this section shall preclude the commissioner from also placing drivers who have accumulated fewer than three unsafe driver points, so-called, into classifications for which the upward premium adjustment is actuarially sound.

Upon receiving notification from said merit rating board that a driver has had five surchargeable incidents within the past three years, the registrar shall, after a hearing based solely on the accuracy of said merit rating board's records, require the said driver to participate in and complete a driver education program satisfactory to the registrar. If such driver fails to provide to the registrar proof of completion of such driver education program within ninety days after the registrar mails to the driver notice of such requirement, the registrar shall suspend the driver's license or right to operate a motor vehicle until the registrar receives proof of completion of such driver education program.

MA ST 175 § 113H

SECTION 39. Clause (7) of subsection (A) of the third paragraph of section 113H of said chapter 175, as so appearing, is hereby amended by inserting after the word "coverage", in line 38, the words:— or the charging of rates at the discretion of the insurer,.

MA ST 175 § 113H

SECTION 40. Said clause (7) of said subsection (A) of said third paragraph of said section 113H of said chapter 175, as so appearing, is hereby further amended by striking out, in line 51, the word "or",— and by striking out, in line 56, the word "policy." and inserting in place thereof the following:—policy;

(v) comprehensive, fire and theft or collision coverage on a vehicle customarily driven, or owned by persons convicted one time within the most recent three year period of any category of driving while under the influence of alcohol or drugs;

(vi) comprehensive, fire and theft or collision coverage on any motor vehicle for which a salvage title has been issued by the registrar of motor vehicles unless a new certificate of title has been issued pursuant to section twenty D of chapter ninety D; or

(vii) comprehensive, fire and theft or collision coverage on a high-theft vehicle which does not have at least a minimum anti-theft or auto recovery device as prescribed by the commissioner of insurance. The commissioner may designate as a "high-theft vehicle" any vehicle, classified according to make, model and year of manufacture, which has both above-average incidence of theft and above-average original sales price, and may prescribe appropriate anti-theft or auto recovery devices for such vehicles.

MA ST 175 § 113H

SECTION 41. Subsection (C) of said section 113H of said chapter 175, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:—

The governing committee shall on or before March thirty-first, nineteen hundred and eighty-nine and thereafter not later than two years after such standards were most recently approved, prepare performance standards for the handling and payment of claims by the servicing carriers. Such standards shall be designed to ensure the speedy settlement of valid claims at the lowest reasonable cost and the denial of fraudulent or otherwise invalid claims. Such performance standards shall be submitted to the commissioner of insurance who, after a public hearing, shall approve or modify such performance standards. The plan shall collect and maintain data on compliance with the performance standards by servicing carriers. Such

information shall be reported annually to the commissioner of insurance and may be the basis for adjustments to premiums.

MA ST 175 § 113H

SECTION 42. Subsection (D) of said section 113H of said chapter 175, as so appearing, is hereby further amended by striking out the last paragraph and inserting in place thereof the following paragraph:—

The premium charges filed by or on behalf of the plan shall provide that such premium charges for all vehicles rated in accordance with the Massachusetts Private Passenger Automobile Insurance Manual and all other nonfleet private passenger vehicles shall not exceed the premium charges which would be used by each risk's servicing carrier for that risk if such risk were not insured in the plan. The premium charges filed by or on behalf of the plan may provide that such premium charges for any risk insured in the plan, other than vehicles rated in accordance with the Massachusetts Private Passenger Automobile Insurance Manual and all other nonfleet private passenger vehicles will exceed the premium charges that would be used by each risk's servicing carrier for that risk if such risk were not insured in the plan, provided, however, that such a filing shall go into effect only if approved by the commissioner and may be disapproved by the commissioner if he determines that it would produce rates or classifications that would be unfair or inconsistent with sound public policy.

MA ST 175 § 113H

SECTION 43. Subsection (E) of said section 113H of said chapter 175, as so appearing, is hereby amended by inserting after the seventh paragraph the following paragraph:—

In appointing a statistical agent, the commissioner shall require, in addition to all other duties and responsibilities, that the statistical agent oversee and conduct a closed claim study so-called. In addition to any other information that the commissioner may require, said study shall include the following: the number of claims filed in a particular year, the average property damage liability coverage claim for said year, the average collision claim for said year, the number of lawsuits filed in said year, the number and average dollar amount granted in court tried cases in said year, the number and average dollar amount agreed upon in out of court settlements in said year, the average payment arising out of property damage in an out of court settlement and through a judicial decision, the number of multiple claims filed under the same vehicle over a three year period, the number of claims closed in said year, the number of claims closed without payment in said year and overall motor vehicle accident severity and frequency. Said study shall also include a report of the profits and losses, generated as the result of writing a private passenger motor vehicle insurance in the commonwealth, of each property and casualty company writing said coverage in the commonwealth.

MA ST 175 § 113H

SECTION 44. Said section 113H of said chapter 175 is hereby amended by adding the following paragraph:—

The plan shall adopt performance standards for claims handling and anti-fraud efforts, including but not limited to programs to control costs and expenses as described in section one hundred and thirteen B, for risks insured or reinsured by the plan. All insurers issuing policies insured or reinsured by the plan shall comply with said performance standards. The plan shall develop pre- and post-payment screening systems designed to identify claims overpayments, possible fraudulent claims, and inefficient claims handling practices. The plan shall provide for periodic audits of all members of the plan as required by the commissioner. The audit shall include policies not insured or reinsured by the plan in order to determine whether there is a difference in claims handling between policies insured voluntarily and those insured or reinsured by the plan. Noncompliance with said performance standards and audit requirements shall constitute a violation of the provisions of this chapter. The plan shall propose and the commissioner shall establish rules concerning the submission of data by insurers. Such rules shall include penalties for the late submission of data, the submission of faulty data, and the failure of insurers to comply with the express terms of audit requests. In addition, the plan shall provide for appropriate adjustments in the allocation of premiums, losses and expenses among companies for companies which do not meet such performance standards or which do not comply with said audit requirements. Such adjustments shall reflect excessive claims payments which result from said noncompliance.

MA ST 175 § 113B

SECTION 45. Section 113B of said chapter 175, as so appearing, is hereby further amended by inserting after the eleventh paragraph the following paragraph:—

In fixing and establishing classifications of risks, the commissioner shall establish a separate rate for coverage provided in paragraph (2) of section one hundred and thirteen L.

MA ST 175 § 113L

SECTION 46. Section 113L of said chapter 175 is hereby amended by striking out paragraphs (1) and (2) and inserting in

place thereof the following two paragraphs:—

(1) No policy shall be issued or delivered in the commonwealth with respect to a motor vehicle, trailer or semitrailer registered in this state unless such policy provides coverage in amounts or limits prescribed for bodily injury or death for a liability policy under this chapter, under provisions approved by the insurance commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles, trailers or semitrailers and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom; and, subject to the terms and conditions of such coverage, such coverage shall include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency.

(2) For the purpose of said coverage, if the policyholder or obligor elects to purchase the coverage described in this paragraph, the term “uninsured motor vehicle” shall also include protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of insured motor vehicles, trailers or semitrailers, to which a bodily injury liability bond or policy applies at the time of the accident and its bodily injury liability bond amount or policy limit is less than the policy limit for uninsured motor vehicle coverage and is insufficient to satisfy the damages of persons insured thereunder and only to the extent that the uninsured motor vehicle coverage limits exceed said limits of bodily injury liability subject to the terms of the policy. The policyholder or obligor shall be notified that he may elect to purchase the said coverage, and such notification shall be at such times and in a manner prescribed by the commissioner of insurance.

MA ST 175 § 113L

SECTION 47. Said section 113L of said chapter 175, as so appearing, is hereby further amended by adding the following paragraph:—

(5) Uninsured motorists coverage shall provide that regardless of the number of vehicles involved, whether insured or not, persons covered, claims made, premiums paid or the number of premiums shown on the policy, in no event shall the limit of liability for two or more vehicles or two or more policies be added together combined or stacked to determine the limits of insurance coverage available to injured persons. An insured who is not a named insured on any policy providing uninsured motorist coverage may recover only from the policy of a resident relative providing the highest limits of such coverage whether or not such vehicle was involved in the accident; provided, however, if there are two or more such policies which provide such coverage at the same limits a pro rata contribution will be made. Any injured occupants who are not named insureds on a policy and who are not insured on a resident relative’s policy may obtain uninsured motorist coverage from the named insured’s policy covering the vehicle they occupy when injured. A person who is a named insured and who suffers bodily injury or death:

(a) while occupying a nonowned motor vehicle registered for highway use may recover only from the policy providing the highest limits of uninsured motorist coverage on which such person is the named insured, provided, however, if there are two or more such policies which provide such coverage at the same limits a pro rata contribution will be made;

(b) while occupying an owned motor vehicle registered for highway use and which had in effect the coverage required by this section shall recover uninsured motorist coverage only from the policy covering such occupied vehicle, provided, however, if there are two or more such policies, a pro rata contribution will be made. An insured who suffers bodily injury or death while occupying a motor vehicle owned by that insured which is registered for highway use and does not have in effect the coverage required by section thirty-four A of chapter ninety may not recover uninsured motorist coverage from any policy. No uninsured motorist coverage shall apply from any policy if a named insured suffers bodily injury or death while occupying an owned motor vehicle registered for highway use being used at the time as a public or livery conveyance and which is not insured for uninsured motorist coverage.

MA ST 175 § 113O

SECTION 48. Section 113O of said chapter 175, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:— Insurers shall also make available additional coverage whereby the deductible of five hundred dollars is reduced to three hundred dollars, except that an insurer may refuse to issue such optional additional coverage on the basis of claims paid, provided that no insurer may refuse to issue such optional additional coverage because of age, sex, race, occupation or principal place of garaging of the vehicle.

MA ST 175 § 113O

SECTION 49. Said section 113O of said chapter 175, as so appearing, is hereby further amended by inserting after the second sentence the following sentence:— The charge for said additional coverage shall not exceed the actuarial cost of reducing the deductible from five hundred dollars to three hundred dollars.

MA ST 175 § 113O

SECTION 50. The first paragraph of said section 113O of said chapter 175, as so appearing, is hereby amended by striking out the third sentence and inserting in place thereof the following sentence:— Notwithstanding the foregoing, insurers shall also make available, at the option of the policyholder, a one hundred dollar deductible applicable to damage to glass of any motor vehicle covered under the comprehensive coverage.

MA ST 175 § 113O

SECTION 51. Said section 113O of said chapter 175, as so appearing, is hereby further amended by striking out the second paragraph and inserting in place thereof the following three paragraphs:—

No insurer shall make any payments to the insured under a policy providing fire and theft coverage or comprehensive coverage, so called, unless it has received a claim form from the insured stating that the repair work described in an appraisal made pursuant to regulations promulgated by the auto damage appraiser licensing board has been completed, except for payments made in accordance with a plan filed and approved pursuant to the following paragraph. In any case, where the insurer fails to make payment within seven days of receipt of the above claim form, the insured may commence a civil action for payments claimed to be due. If the court determines that the insurer was unreasonable in refusing to pay said insured's claim, the claimant shall be entitled to recover double the amount of damage plus costs and reasonable attorneys' fees fixed by the court. If such claim form is not received by the insurer, the insurer shall pay to the insured only the decrease in actual value of the insured vehicle less any deductible. If the insured elects not to repair the vehicle, or if the insurer does not receive a claim form from the insured stating that the repair work has been completed, the insurer shall decrease the actual cash value of the insured vehicle by the amount of damage sustained.

Notwithstanding the second paragraph or any other general or special law to the contrary, an insurer may file a plan for approval by the commissioner providing for direct payment by the insurer to the insured for the loss of or damage to the insured motor vehicle under fire and theft coverage or comprehensive coverage, so called, prior to receipt by the insurer of a claim form from the insured stating that the repair work described in an appraisal made pursuant to regulations promulgated by the auto damage appraisers licensing board has been completed. Such plan shall not be approved unless it: (a) provides for a procedure acceptable to the commissioner to resolve any dispute between the insured and the insurer as to the adequacy of the payment; (b) provides for adequate disclosure to the insured of his or her rights hereunder; and (c) contains such other terms and conditions as the commissioner shall prescribe. The commissioner may revoke approval for such a plan if he determines that the insurer is not complying with its terms or that the plan does not carry out the purposes of this section. If an insured under fire and theft coverage or comprehensive coverage, so called, elects not to repair an insured vehicle for which a claim payment has been made under one of said coverage or if the insurer does not receive a claim form from the insured certifying that the repair work has been done in accordance with an appraisal made pursuant to regulations promulgated by the auto damage appraisers licensing board, then the insurer and any successor insurer shall decrease the actual cash value of the insured vehicle by the amount of the claim payment plus any applicable deductible until such time as the insurer or any successor insurer receives a claim form with the certification described above; provided, however, that for at least seventy-five per cent of those claims where the appraisal indicates that the cost of repairs will exceed four thousand dollars and at least twenty-five per cent of those claims where the appraisal indicates that the cost of repairs will be four thousand dollars or less, a licensed auto damage appraiser shall reinspect the vehicle following completion of repairs and shall certify on the claim form that the work has been completed in accordance with an appraisal made pursuant to said regulations. The commissioner shall hold a hearing prior to approval of any such plan or plans. The commissioner may promulgate such rules and regulations as he deems necessary for the implementation of this paragraph.

The commissioner may require any plan filed pursuant to the preceding paragraph to provide (a) that the insured will be given a list of at least five repair shops, geographically convenient for the insured, from which the insured may at his or her option select a shop which will without undue delay complete the repair work for the amount of the payment to the insured, plus any applicable deductible, that the insurer will guarantee the quality of the materials and workmanship used in making repairs if the repairs are performed at one of the repair shops so listed.

(b) that in no event shall the selection of vehicles for reinspection be based on the age or sex of the policyholder or of the customary operators of the vehicle, or on the principal place of garaging the vehicle; and

(c) that no insurer or appraiser shall require that repairs to any motor vehicle be made at any specific repair shop, or list of repair shops; and

(d) that in determining which repair shops will be listed as described above, the insurer shall consider only the quality and cost of repairs at a particular shop, the quality of the service given the customer, the responsiveness of the shop to customers' needs, the ability of the shop to perform repairs without undue delay, the geographic convenience of the shop for the insured, cooperation of the shop with pre- and post-repair inspections, and the shop's compliance with applicable laws and regulations. A repair shop shall be included on the list prepared by the insurer if the shop agrees in writing to comply in full with the plan filed by the insurer and approved by the commissioner. An insurer may strike a shop from the list provided it files a statement with the commissioner specifying the nature of the shop's failure to comply with the plan. Such plan shall include a fair and adequate procedure for relief for repair shops improperly stricken from such list; and

(e) no employee or agent of an insurer with responsibility for creating, managing or maintaining a list of repair shops as

described above shall receive or ask for any payment, gift or other thing of value from any repair shop included, or seeking to be included, in the said list of repair shops, and no repair shop, or employee or owner thereof, shall give, pay or offer to give or pay any money or thing of value to any employee or agent of an insurer with responsibility for creating, managing or maintaining a list of repair shops. No repair shop, or employee, owner or agent thereof, shall give or pay, or offer to give or pay, any thing of value to any person in exchange for being included, or as an inducement to be included, on such a list of repair shops. For purposes of this paragraph, the words “employee”, “owner” and “agent” shall also include any spouse or child of an employee, owner or agent. Violation of the provision of this paragraph may be grounds for revocation or suspension of any certificate of registration or license held pursuant to chapter one hundred A or this chapter.

MA ST 175 § 113O

SECTION 52. The third paragraph of said section 113O of said chapter 175, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:— Insurers shall report the theft or misappropriation of a motor vehicle, including the vehicle identification number and such other information as may be required, to a central organization engaged in motor vehicle loss prevention, as designated by the commissioner, and the National Automobile Theft Bureau or its successor organization, in accordance with the regulations promulgated by the commissioner.

MA ST 175 § 113S

SECTION 53. Said chapter 175 is hereby further amended by inserting after section 113R the following two sections:—

Section 113S. (a) For purposes of this section, “existing customer” shall mean an applicant for a motor vehicle liability policy who has been insured for three years or longer without interruption under a motor vehicle liability policy or policies issued by the insurer to which the applicant’s application is submitted.

(b) A motor vehicle liability policy shall not provide fire and theft coverage or comprehensive coverage, so-called, or collision or limited collision coverage for a private passenger motor vehicle prior to an inspection of that motor vehicle by the insurer, unless:

- (1) the motor vehicle is new;
- (2) the applicant for such coverage is an existing customer of the insurer;
- (3) the motor vehicle is already insured for such coverages with the insurer by the applicant; or
- (4) as provided in paragraph (2) of subsection (c).

(c) The commissioner shall promulgate regulations which shall:

- (1) provide that insurers shall offer inspection at locations and at times reasonably convenient to the insured. Where an inspection is required pursuant to this section, it shall be conducted by the insurer or its authorized representative and shall be recorded on a form prescribed by the commissioner. Such form shall be retained by the insurer with its policy records for the insured and a copy of such form shall be made available to the insured upon request.
- (2) provide that the inspections required in this section shall be waived under circumstances specified in the regulation. Such circumstances may include, but are not limited to:
 - (i) When requiring an inspection would cause a serious hardship to the insurer, the insured or an applicant for insurance;
 - (ii) When the insurer has no inspection facility or authorized representative either in the city or town in which the motor vehicle is principally garaged or within five miles of the said city or town.
- (3) provide that such inspections shall include at least the following:
 - (i) taking a physical imprint of the vehicle identification number of the vehicle or otherwise record the vehicle identification number in a manner satisfactory to the commissioner;
 - (ii) taking two color photographs of the car at angles which show the front, back and side of the vehicle;
 - (iii) recording the presence of such accessories as the commissioner shall designate; and
 - (iv) recording the location of and a description of existing damage to the vehicle.

(d) A motor vehicle liability policy shall not provide fire and theft coverage or comprehensive coverage, so-called, or collision or limited collision coverage for any motor vehicle for which a salvage certificate has been issued by the registrar of motor vehicles, unless a new certificate of title has been issued pursuant to section twenty D of chapter ninety D. Notwithstanding the foregoing, any insurer, authorized to issue motor vehicle liability policies may, but shall not be compelled to, issue a special policy or endorsement providing fire and theft coverage and/or comprehensive coverage, so-called, or collision or limited collision coverage for any motor vehicle having a salvage title, on such terms and conditions and subject to such inspections as the insurer shall require.

MA ST 175 § 113T

Section 113T. Notwithstanding the provisions of section eight G of chapter twenty-six, a motor vehicle liability policy may, upon approval by the commissioner and by endorsement prescribed by the commissioner, include coverage, at the insured’s option, pursuant to which the insurer will repair damage to insured motor vehicles, in accordance with collision or limited

collision coverage provided under section thirty-four O of chapter ninety or comprehensive coverage provided under sections one hundred and thirteen C and one hundred and thirteen O of this chapter, at participating repair shops. One or more registered automobile damage repair shops may contract with an insurer or insurers as a participating repair shop to repair damage to insured motor vehicles covered under a participating repair shop endorsement. An insurance company offering a participating repair shop endorsement shall provide an appropriate reduction in the premium charges for such coverages, which shall be subject to approval by the commissioner, and such company shall provide any information in support of its reduction as may be required by the commissioner. The commissioner shall have authority to promulgate such rules and regulations as he deems necessary for the implementation of this section. Such rules and regulations may include, but need not be limited to, procedures for approval of such coverages, and standards to ensure that the endorsement will be offered in a nondiscriminatory manner, that the service will be convenient to insureds, and that the repairs will be of comparable quality to those made by non-participating repair shops. Nothing in this section shall be deemed to compel an insurer to offer participating repair shop coverage.

The commissioner shall file said plan as well as such rules as he deems necessary for implementation of the plan with the clerk of the house of representatives on or before September first, nineteen hundred and eighty-nine. The clerk of the house of representatives, with the approval of the president of the senate and the speaker of the house of representatives, shall refer such regulations to the joint committee on insurance within thirty days of such referral, said committee may hold a public hearing on the regulations and shall issue a report to the commissioner. Said commissioner shall review said report and shall adopt final regulations as deemed appropriate in view of said report and said regulations shall take effect as of the first of January, nineteen hundred and ninety.

MA ST 175E § 11A

SECTION 54. Chapter 175E of the General Laws is hereby amended by inserting after section 11 the following section:—
Section 11A. Insurance companies or their agents shall disclose in simple language to every person they insure or solicit for insurance that person's coverage options, including the option to exclude oneself and members of one's household from personal injury protection coverage, so-called. The commissioner shall prescribe the form, content, and timing of said disclosures.

MA ST 231 § 6D

SECTION 55. Section 6D of chapter 231 of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by striking out, in line 10, the words "five hundred" and inserting in place thereof the words:— two thousand.

MA ST 266 § 27A

SECTION 56. Section 27A of chapter 266 of the General Laws, as so appearing, is hereby amended by inserting after the word "year", in line 6, the words:—or by a fine of not more than fifteen thousand dollars, or by both such fine and imprisonment.

MA ST 266 § 27A

SECTION 57. Said section 27A of said chapter 266, as so appearing, is hereby further amended by striking out the second, third, fourth, fifth and sixth paragraphs and inserting in place thereof the following three paragraphs:—

The court shall, after conviction, conduct an evidentiary hearing to ascertain the extent of the damages or financial loss suffered as a result of the defendant's crime. A person found guilty of violating this section shall, in all cases, upon conviction, in addition to any other punishment, be ordered to make restitution to the insurer for any financial loss sustained as a result of the commission of the crime; provided, however, that restitution shall not be ordered to a party whom the court determines to be aggrieved without that party's consent. Restitution shall be imposed in addition to incarceration or fine, and not in lieu thereof; provided, however, the court shall consider the defendant's present and future ability to pay in its determinations regarding a fine; provided, further, that, whenever possible subject to the constraints of this paragraph and the preceding paragraph, the amount of a fine imposed for a violation of this section shall equal twice the amount of damages or financial loss suffered as a result of the defendant's crime.

In determining the amount, time and method of payment of restitution, the court shall consider the financial resources of the defendant and the burden restitution will impose on the defendant. Upon a real or impending change in financial circumstances, a defendant ordered to pay restitution may petition the court for a modification of the amount, time or method of payment of restitution. If the court finds that because of any such change the payment of restitution will impose an undue financial hardship on the defendant or his family, the court may modify the amount, time or method of payment, but may not grant complete remission from payment of restitution.

If a defendant who is required to make restitution defaults in any payment of restitution or installment thereof, the court shall hold him in contempt unless said defendant has made a good faith effort to pay such restitution. If said defendant has made a

good faith effort to pay such restitution, the court may modify the amount, time or method of payment, but may not grant complete remission from payment of restitution.

MA ST 266 § 28, subd. (a)

SECTION 58. Subdivision (a) of section 28 of said chapter 266, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:—

Whoever steals a motor vehicle or trailer, whoever maliciously damages a motor vehicle or trailer, whoever buys, receives, possesses, conceals, or obtains control of a motor vehicle or trailer, knowing or having reason to know the same to have been stolen, or whoever takes a motor vehicle without the authority of the owner and steals from it any of its parts or accessories, shall be punished by imprisonment in the state prison for not more than fifteen years or by imprisonment in a jail or house of correction for not more than two and one-half years or by a fine of not more than fifteen thousand dollars, or by both such fine and imprisonment.

MA ST 266 § 29

SECTION 59. Section 29 of said chapter 266, as so appearing, is hereby amended by striking out the third, fourth, fifth, sixth and seventh paragraphs and inserting in place thereof the following three paragraphs:—

The court shall, after a defendant is convicted of a violation of subsection (a) of section twenty-eight, conduct an evidentiary hearing to ascertain the extent of the damages or financial loss suffered as a result of the defendant's crime. A person found guilty of violating subsection (a) of section twenty-eight shall in all cases, upon conviction, in addition to any other punishment, be ordered to make restitution to the insurer for any financial loss sustained as a result of the commission of the crime; provided, however, that restitution shall not be ordered to a party whom the court determines to be aggrieved without that party's consent. Restitution shall be imposed in addition to incarceration or fine, and not in lieu thereof; provided, however, the court shall consider the defendant's present and future ability to pay in its determinations regarding a fine; provided, further, that, whenever possible subject to the constraints of this paragraph and the first paragraph of said subsection (a) of section twenty-eight, the amount of a fine imposed for a violation of said subsection (a) of section twenty-eight shall equal twice the amount of damages or financial loss suffered as a result of the defendant's crime.

In determining the amount, time and method of payment of restitution, the court shall consider the financial resources of the defendant and the burden restitution will impose on the defendant. Upon a real or impending change in financial circumstances, a defendant ordered to pay restitution may petition the court for a modification of the amount, time or method of payment of restitution. If the court finds that because of any such change the payment of restitution will impose an undue financial hardship on the defendant or his family, the court may modify the amount, time or method of payment, but may not grant complete remission from payment of restitution.

If a defendant who is required to make restitution defaults in any payment of restitution or installment thereof, the court shall hold him in contempt unless said defendant has made a good faith effort to pay such restitution. If said defendant has made a good faith effort to pay such restitution, the court may modify the amount, time or method of payment, but may not grant complete remission from payment of restitution.

MA ST 266 § 111B

SECTION 60. Said chapter 266 is hereby further amended by striking out section 111B, as so appearing, and inserting in place thereof the following section:—

Section 111B. Whoever, in connection with or in support of any application for or claim under any motor vehicle, theft or comprehensive insurance policy issued by an insurer, and with intent to injure, defraud or deceive such insurer knowingly presents to it, or aids or abets in or procures the presentation to it of, any notice, statement, or proof of loss, whether or not the same is under oath or is required or authorized by law or the terms of such policy, knowing that such notice, statement or proof of loss contains any false or fraudulent statement or representation of any fact or thing material to such application or claim, shall be punished by imprisonment in a jail or house of correction for not less than six months nor more than two and one-half years or by a fine of not less than one thousand nor more than four thousand dollars, or both.

A person licensed as a motor vehicle damage appraiser pursuant to section eight G of chapter twenty-six or registered as a motor vehicle repair shop pursuant to chapter one hundred A who violates this section, by fraudulently inflating an appraisal of damage to a motor vehicle or the charges for repairing a damaged motor vehicle or otherwise, shall be punished by the additional penalty of revocation of such license or registration for a period not to exceed two years.

The court shall, after conviction, conduct an evidentiary hearing to ascertain the extent of the damages or financial loss suffered as a result of the defendant's crime. A person found guilty of violating this section shall, in all cases, upon conviction, in addition to any other punishment, be ordered to make restitution to the insurer for any financial loss sustained as a result of the commission of the crime; provided, however, that restitution shall not be ordered to a party whom the court determines to be aggrieved without that party's consent. Restitution shall be imposed in addition to incarceration or fine, and not in lieu thereof; provided, however, the court shall consider the defendant's present and future ability to pay in its

determinations regarding a fine; provided, further, that, whenever possible subject to the constraints of this paragraph and the first paragraph of this section, the amount of a fine imposed for a violation of this section shall equal twice the amount of damages or financial loss suffered as a result of the defendant's crime.

In determining the amount, time and method of payment of restitution, the court shall consider the financial resources of the defendant and the burden restitution will impose on the defendant. Upon a real or impending change in financial circumstances, a defendant ordered to pay restitution may petition the court for a modification of the amount, time or method of payment of restitution. If the court finds that because of any such change the payment of restitution will impose an undue financial hardship on the defendant or his family, the court may modify the amount, time or method of payment, but may not grant complete remission from payment of restitution.

If a defendant who is required to make restitution defaults in any payment of restitution or installment thereof, the court shall hold him in contempt unless said defendant has made a good faith effort to pay such restitution. If said defendant has made a good faith effort to pay such restitution, the court may modify the amount, time or method of payment, but may not grant complete remission from payment of restitution.

MA ST 280 § 2

SECTION 61. Section 2 of chapter 280 of the General Laws, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:—

Fines imposed under the provisions of chapters eighty-nine and ninety, including fines, penalties and assessments imposed under the provisions of chapter ninety C for the violation of the provisions of chapters eighty-nine and ninety, fines assessed by a hearing officer of a city or town as defined in sections twenty A and twenty A ½ of chapter ninety and forfeitures imposed under the provisions of section one hundred and forty-one of chapter one hundred and forty, shall be paid over to the treasury of the city or town wherein the offense was committed; provided, however, that only fifty per cent of the amount of fines, penalties and assessments collected for violations of section seventeen of chapter ninety or of a special speed regulation lawfully made under the authority of section eighteen of said chapter ninety shall be paid over to the treasury of the city or town wherein the offense was committed and the remaining fifty per cent shall be paid over to the state treasurer and credited to the Highway Fund.

SECTION 62. Notwithstanding any general or special law to the contrary, the registrar of motor vehicles shall establish a one year priority, special strike force in the registry to work with local communities to remove uninsured vehicles from Massachusetts roads for the purpose of implementing chapter eight hundred and six of the acts of nineteen hundred and eighty-five. The strike force shall be required to report the results in numbers of the implementation of chapter eight hundred and six to the clerk of the house of representatives who shall forward the same to the joint committee on insurance and to the house and senate ways and means committees on or before January first, nineteen hundred and ninety and quarterly reports thereafter. Said strike force shall take effect no later than July first, nineteen hundred and eighty-nine.

In addition to any other duties, the strike force shall assist municipalities in implementing the statute on the local level and provide whatever information and assistance necessary thereto.

SECTION 63. The secretary of public safety is hereby authorized to expend an amount not to exceed twenty-five thousand dollars of revenues collected from the auto etching program, so called, for purposes of continuing the auto etching program; provided, that a minimum fee of ten dollars shall be charged per automobile for services rendered.

SECTION 64. The secretary of consumer affairs and business regulation shall establish a Massachusetts automobile insurance public education program, which shall have as its goals the development of increased awareness by Massachusetts consumers of their options, rights and obligations under our automobile insurance system; the promotion of consumer behavior which will result in cost savings in automobile insurance; the provision of information to consumers, insurers and insurance producers, automobile body and glass repair shops, attorneys, the judiciary, law enforcement agencies and other groups, to foster increased understanding of automobile insurance facts and issues and to reduce unnecessary or invalid claims and costs. Such program shall include production and distribution of pamphlets, in understandable language, explaining consumer options, rights and obligations under the automobile insurance system, and it may include use of the media or direct mailing, as appropriate, to provide education and information to the public or to various groups, cooperation with existing educational activities to develop educational programs in common, development of educational presentations, videos, public service announcements and programs, or such other public education activities as the secretary shall determine. The secretary of consumer affairs and business regulation is hereby authorized to make an assessment against the plan organized pursuant to section one hundred and thirteen H of chapter one hundred and seventy-five of the General Laws to pay for the expenses of the Massachusetts automobile insurance public education program. Said assessment shall be made at a rate sufficient to produce one hundred thousand dollars in each of fiscal years nineteen hundred and eighty-nine and nineteen hundred and ninety; provided, however, that if the secretary of consumer affairs and business regulation shall fail to expend for the costs and expenses of the Massachusetts automobile insurance public education program in fiscal year nineteen hundred and eighty-nine the total amount of one hundred thousand dollars for the purposes set forth in this section, the amount unexpended in such fiscal year shall be credited against the assessment to be made in the following year, and the assessment in the following year shall be reduced by such unexpended amount. Assessments under this section may be

credited to the normal operating costs of the said plan. The funds produced by said assessments shall be expended by the secretary of consumer affairs and business regulation, in addition to any other funds which may be appropriated, to assist in defraying the general operating expenses of the Massachusetts automobile insurance public education program, and may be used to compensate consultants retained by the program. The assessments shall be collected by the secretary of consumer affairs and business regulation, and the said plan shall pay the amount assessed against it within thirty days after the date of the notice of assessment from the secretary.

SECTION 65. The commissioner of insurance is hereby directed to undertake a study, in consultation with representatives of the property and casualty industry and of the independent insurance agents, of the feasibility and of the financial and administrative impact of permitting insurance companies to offer, as a coverage option, a deductible on the existing optional bodily injury to others coverage. Said commissioner shall report to the general court the results of its investigation and study and its recommendations, if any, together with drafts of legislation to the clerk of the house of representatives who shall forward the same to the joint committee on insurance and the house and senate committees on ways and means by the first of July, nineteen hundred and eighty-nine.

MA ST 175 § 113H, note

SECTION 66. Notwithstanding the provisions of section one hundred and thirteen H of chapter one hundred and seventy-five of the General Laws, the commissioner of insurance, in consultation with the governing committee of the current plan, representatives of property and casualty insurance companies undertaking to issue motor vehicle liability policies or bonds as defined in section thirty-four A of chapter ninety of the General Laws, representatives from associations of insurance producers and other parties he may request, shall develop for implementation a revision of the plan established pursuant to section one hundred and thirteen H of chapter one hundred and seventy-five of the General Laws which shall provide motor vehicle liability insurance to applicants who have been unable to obtain insurance through the method by which insurance is voluntarily made available. Such revision shall provide for the fair and equitable apportionment among such insurance companies of the losses, risks, premiums and expenses associated with providing coverage to such applicants. Such revision shall have the effect of decreasing the number of ceded policies and enhancing cost containment by participating companies. Such revision may include but need not be limited to: criteria regulating the conditions under which policies may be ceded; specific limitations upon the percentage of a company's insureds which may be ceded; specific limitations upon the percentage of any individual risk which may be reinsured through the plan; provisions for the removal of policies from the plan based upon excellent driving records; cession penalties or charges, to reflect the cost of the plan's cost containment and anti-fraud programs; the administration and finance of the plan; a provision which allows the commissioner to require the participation of all companies as servicing carriers; and such other terms and conditions as the commissioner may prescribe. The commissioner shall file said plan as well as such rules as he deems necessary for implementation of the plan with the clerk of the house of representatives, on or before September first, nineteen hundred and eighty-nine. The clerk of the house of representatives, with the approval of the president of the senate and the speaker of the house of representatives shall refer such regulations to the joint committee on insurance. Within thirty days of such referral, said committee may hold a public hearing on the regulations and shall issue a report to the commissioner. Said commissioner shall review said report and shall adopt final regulations as deemed appropriate in view of said report and said regulations shall take effect as of the first of January, nineteen hundred and ninety.

SECTION 67. That a special commission to consist of three senators, five members of the house of representatives, the commissioner of public safety or his designee, the registrar of motor vehicles or his designee, and three persons to be appointed by the governor, one of whom shall be a driver school owner, and one of whom shall be a driver school instructor, shall be established for the purpose of examining, but not be limited to, driver education training.

Said commission shall make recommendations to the registry and any other appropriate entity for the purpose of rewriting the rules and regulations of all driver education programs; including in-class and behind-the-wheel training, and for establishing within the registry of motor vehicles a driver school instructor training program.

Said commission shall make recommendations to the registry or any other appropriate entity for the annual conduction of on-site inspections of all driver education schools for re-certification purposes.

Said commission shall make its reports, recommendations, and findings to the clerk of the house of representatives who shall forward the same to the joint legislative committee on insurance and the joint legislative committee on public safety on or before March first, nineteen hundred and eighty-nine.

SECTION 68. The commissioner of insurance is hereby directed to undertake a study of the direct pay and referral systems instituted by sections twenty-four and fifty-one of this act. In particular the commissioner shall examine the implementation of the direct pay and referral systems and their financial impact on consumers, on body shop owners, and on the system as a whole, including cost savings attributable thereto in the rate making process. Said commissioner shall report to the general court the results of its investigation and study and its recommendations, if any, together with drafts of legislation to the clerk of the house of representatives who shall forward the same to the joint committee on insurance and the house and senate committees on ways and means by the first of January, nineteen hundred and ninety-two.

SECTION 69. There is hereby established a special commission to make an investigation and study of the rules, regulations,

plans of operation and laws relating to the system of automobile insurance in the commonwealth. The commission shall be chaired jointly by the house and senate chair of the joint committee on insurance, and shall consist of three additional members of the house, to be appointed by the speaker of the house, three additional members of the senate, to be appointed by the president of the senate, the secretary of consumer affairs or his designee, the commissioner of insurance or his designee, the attorney general or his designee, and six members to be appointed by the governor, one of whom shall be a member of the property and casualty insurance industry, one of whom shall be a representative of the insurance agents, one of whom shall be a representative of the autobody industry, one of whom shall be a practicing attorney with expertise in the area of automobile liability insurance, and two of whom shall be representatives of automobile insurance consumers.

The commission shall consider generally the fairness, efficiency, and workability of the present system of automobile insurance in the commonwealth, and shall explicitly consider, among others that it deems relevant, the following issues:

— The feasibility of deregulating private passenger motor vehicles rates and establishing in its place a system of partially or fully competitive rates;

— The feasibility and potential effects on rate levels of a plan to establish a system of flex rating, so-called;

— The accuracy and efficiency of the existing rate making process, and what procedural improvements could be undertaken to improve the accuracy and fairness of said process;

— The differences in average cost of repair for different makes and models of automobiles, and whether differences in average cost of repair for different makes and models could be incorporated into the rate making process with respect to collision and comprehensive coverages;

— The differences in average cost of repair resulting from (1) variations in labor rates, labor times, parts prices, discounts on parts prices, and storage and towing costs; and (2) the use of rebuilt parts, used parts, and so-called non-OEM parts;

— The causes of auto theft claim frequency and of auto collision claim frequency, and what measures could be taken to reduce the incidence of such claim frequencies;

— The accuracy and fairness of the existing territorial system, and in particular, how territorial boundaries are drawn, how weights are assigned to each territory, whether different boundaries and classifications could more accurately reflect the driving experience within each territory, and the potential implementation and impact of a territorial system within which the premium charges established in each territory would be actuarially sound;

— The feasibility and legality of prohibiting retroactive premiums or of rescinding retroactive premiums after they have been authorized by the commissioner of insurance; and,

— The effectiveness of cost containment incentives in both the voluntary and involuntary market, so called, and what measures could be undertaken to improve cost containment in both markets.

The commission shall file the results of its investigation and study, along with drafts of legislation, if any, and a plan for the implementation of any recommendations, with the clerk of the house, the clerk of the senate, and the joint committee on insurance no later than the fifteenth of October, nineteen hundred and eighty-nine.

MA ST 175 § 113L, note

SECTION 70. With respect to private passenger motor vehicle insurance policies issued or renewed in nineteen hundred and eighty-nine, insurers shall provide every purchaser of such policies with a notice of the changes in the law governing underinsured and uninsured motorist coverages pursuant to section forty-six hereof. The form and content of such notice shall be prescribed by the commissioner, provided that, without limitation, such notice shall specifically inform the purchaser that unless the purchaser affirmatively elects underinsured coverage as provided for in paragraph (2) of section one hundred and thirteen L of chapter one hundred and seventy-five of the General Laws, as amended by section forty-six hereof, his policy will not provide it. For holders or obligors of policies issued or renewed in nineteen hundred and eighty-eight who renew those policies in nineteen hundred and eighty-nine, notwithstanding the provisions of section forty-six hereof, uninsured coverage under the nineteen hundred and eighty-nine policy will continue to include underinsured coverage in the same policy limit as the policyholder or obligor had at the end of the policy, but subject to all other provisions of said paragraph (2) as amended, until two weeks after the mailing of the notice prescribed herein to the policyholder or obligor, unless at some earlier time the policyholder or obligor selects other limits or elects not to purchase such coverage; provided, that this sentence shall not apply: (1) to any policy issued or renewed twenty-one days or more after the date such notice is mailed to the policyholder or obligor; (2) to any policy which is not a renewal of a nineteen hundred and eighty-eight policy; or (3) to any policy issued or renewed after April thirtieth, nineteen hundred and eighty-nine.

SECTION 71. The commissioner of insurance is directed to undertake a study, in consultation with representatives of the property casualty industry, the independent insurance agents and such other parties as he may request, of the coverage selection page, so-called, and shall, prior to January first, nineteen hundred and ninety, issue a revised standard coverage selection page which will provide automobile insurance consumers with clear disclosure of the coverages available and the coverage selected including but not limited to underinsurance and optional increased bodily injury limits.

MA ST 231 § 6D, note

SECTION 72. Each year after nineteen hundred and ninety, the commissioner of insurance shall prepare a report on the effectiveness and adequacy of the tort threshold, so called, provided in section six D of chapter two hundred and thirty-one of the General Laws, and of the personal injury protection benefit provided in section thirty-four A of chapter ninety. Such report shall include, without limitation, a calculation of the affect of inflation on the tort threshold and personal injury protection benefit, the degree to which such threshold has or has not deterred or prevented minor motor vehicle personal injury claims from generating lawsuits, and whether such deterrence or prevention continues to be effective. The commissioner shall also include in said report his recommendations for any changes in or update of the laws applicable to the tort threshold and personal injury protection benefit. He shall file such report with the clerk of the house, the clerk of the senate, the joint committee on insurance and the house and senate committees on ways and means, no later than the first of September of each such year.

SECTION 73. Notwithstanding the provisions of any general or special law to the contrary, an amount not to exceed one million dollars of the fines collected pursuant to sections twenty-seven A, twenty-eight, twenty-nine and one hundred and eleven B of chapter two hundred and sixty-six of the General Laws shall be payable to the governor's auto theft strike force.

MA ST 231 § 6D, note

SECTION 74. Each year after nineteen hundred and ninety, the commissioner of insurance shall prepare a report on the effectiveness and adequacy of the tort threshold, so called, provided in section six D of chapter two hundred and thirty-one of the General Laws, and of the personal injury protection benefit provided in section thirty-four A of chapter ninety of the General Laws. Such report shall include, without limitation, a calculation of the affect of inflation on the tort threshold and personal injury protection benefit, the degree to which such threshold has or has not deterred or prevented minor motor vehicle personal injury claims from generating lawsuits, and whether such deterrence or prevention continues to be effective. The commissioner shall also include in said report his recommendations for any changes in or update of the laws applicable to the tort threshold and personal injury protection benefit. He shall file such report with the clerk of the house, who shall forward the same to the joint committee on insurance and the house and senate committees on ways and means, no later than the first of September of each such year.

SECTION 74A. Pursuant to the first year after the effective date of this act, on or before January first, nineteen hundred and ninety the statistical agent as defined in section forty-three shall undertake a closed claim study, so-called, for the three years immediately prior to the effective date of this act. In each succeeding year after the effective date of this act the statistical agent shall conduct a closed claim study for the year immediately prior.

MA ST 90 § 34A, note

SECTION 75. Sections eleven and thirteen of this act shall take effect on January first, nineteen hundred and ninety-one.

MA ST 90 § 34A, note

SECTION 76. Sections twelve and fourteen of this act shall take effect on January first, nineteen hundred and ninety-three.

MA ST 6 § 183A, note

MA ST 26 § 8G, note

MA ST 90 § 24H, note

MA ST 90 § 25, note

MA ST 90 § 30A, note

MA ST 90 § 30B, note

MA ST 90 § 34A, note

MA ST 90 § 34J, note

MA ST 90 § 34M, note

MA ST 90 § 34O, note

MA ST 90 § 34Q, note

MA ST 90D § 1, note

MA ST 90D § 17, note

MA ST 90D § 20, note

MA ST 90D § 20A, note

MA ST 90D § 20B, note

MA ST 90D § 20C, note

MA ST 90D § 20D, note

MA ST 90D § 20E, note

MA ST 90D § 28, note

MA ST 100A §§ 1 to 10, note

MA ST 175 § 113B, note

MA ST 175 § 113H, note

MA ST 175 § 113L, note

MA ST 175 § 113O, note

MA ST 175 § 113S, note

MA ST 175 § 113T, note

MA ST 175E § 11A, note

MA ST 231 § 6D, note

MA ST 266 § 27A, note

MA ST 266 § 28, note

MA ST 266 § 111B, note

MA ST 280 § 2, note

SECTION 77. Except as otherwise specifically provided in this act, this act shall take effect on the first of January, nineteen hundred and eighty-nine.

The provisions of sections fifteen, sixteen, and forty-seven of this act shall be effective for policies or contracts issued or renewed on or after the first of January, nineteen hundred and eighty-nine.

The provisions of section fifty-five shall be effective for causes of action arising on or after the first of January, nineteen hundred and eighty-nine.

The provisions of section sixty-one shall be effective on the first of April, nineteen hundred and eighty-nine.

Approved Nov. 5, 1988.

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