

# Massachusetts General Laws

## Chapter 90-Section 340 Property damage liability insurance or bonds

Section 340. Every person having in force a motor vehicle liability policy or motor vehicle liability bond, as defined in section thirty-four A, shall also maintain in force either property damage liability insurance or a bond providing equivalent coverage. Every insurer issuing or executing a motor vehicle liability policy or bond shall also provide property damage liability coverage for the policyholder or obligor. Property damage liability insurance is insurance containing provisions as prescribed in this section, among such other provisions, including conditions, exclusions, and limitations, as the commissioner of insurance may approve.

Every policy of property damage liability insurance shall provide that the insurer will pay on behalf of the insured all sums the insured shall become legally obligated to pay as damages because of injury to or destruction of property, including loss of use thereof, caused by accident and arising out of the ownership, maintenance or use, including loading and unloading of the insured motor vehicle, subject to a limit of not less than five thousand dollars because of injury to or destruction of property of others in any one accident. Under terms and conditions approved by the commissioner the insurer shall have the right and duty to defend any suit against the insured seeking damages on account of such injury to or destruction of property even if any of the allegations of the suit are groundless, false or fraudulent.

An insurer shall not make payments to an individual seeking to collect payment under the provisions of this section, unless the individual has presented a signed direction to pay on a form described by the commissioner for the loading, unloading and storage of the damaged vehicle to the legally entitled certified carrier or garageman. All payments to any such certified carrier or garageman shall be made in accordance with the requirements of the completed work claim form as prescribed in this section.

Except for coverages which insurers may refuse to offer under the provisions of paragraph (A) of section one hundred and thirteen H of chapter one hundred and seventy-five, every insurer issuing or executing a motor liability policy or bond shall also provide at the option of the policyholder or obligor the following coverages:—

(1) *Collision Coverage.* The insurer shall pay either to the insured or to a repair shop if the insured so indicates in writing to his insurance company for direct and accidental loss of or damage to the insured motor vehicle, subject to a deductible of five hundred dollars, up to a limit equal to the actual cash value of the vehicle less such deductible, caused by collision of the insured motor vehicle with another object or with a vehicle to which it is attached, or by upset of the insured motor vehicle. Benefits under this coverage are payable without regard to negligence, comparative negligence, gross negligence or fault of any kind; except that said policy or bond shall provide that benefits under this coverage shall not be payable if said loss of or damage to the insured vehicle occurs when the operator of such vehicle is a household member, other than the insured, who is not listed as an operator on such policy or bond and if listed, would be classified as an inexperienced driver or would subject the policy to increased premiums under the provisions of the safe driver insurance plan established by the commissioner pursuant to the provisions of section one hundred and thirteen B of chapter one hundred and seventy-five. The insurer may require as a condition of continuing such coverage in effect that a vehicle for which total damage has been paid pass a motor vehicle safety inspection test.

Insurers shall also make available additional coverage whereby an insured who has selected collision coverage shall be entitled to full payment, without regard to comparative negligence or any

deductible if any of the cases described in clauses (a) to (d), inclusive, of limited collision coverage occur; provided that the negligence attributable to such an insured is fifty per cent or less.

(2) *Limited Collision Coverage.* The insurer shall pay either to the insured or to a repair shop if the insured so indicates in writing to his insurance company for direct and accidental loss of or damage to the insured motor vehicle in cases described in clauses (a) to (d), inclusive, subject to a deductible of five hundred dollars, up to a limit equal to the actual cash value of the vehicle less such deductible without regard to comparative negligence attributable to the operator of the vehicle which is not in excess of fifty per cent; except that the policy or bond shall provide that benefits under this coverage shall not be payable if said loss of or damage to the insured motor vehicle occurs when the operator of such vehicle is a household member, other than the insured, who is not listed as an operator on such policy or bond and, if listed, would be classified as an inexperienced driver or would subject the policy to increased premiums under the provisions of the safe driver insurance plan established by the commissioner pursuant to the provisions of section one hundred and thirteen B of chapter one hundred and seventy-five.

(a) Cases in which the insured is entitled to recover in tort for such loss or damage against another identified person; the insured, in such a case, shall take all steps necessary to preserve the insurer's right of subrogation;

(b) Cases in which the loss or damage is incurred by the insured motor vehicle while the vehicle is lawfully parked and the loss or damage is the result of impact with another vehicle owned by another identified person;

(c) Cases in which the insured motor vehicle is struck in the rear by another vehicle owned by another identified person moving in the same direction;

(d) Cases in which the operator of the vehicle causing loss or damage to the insured motor vehicle as a result of his operation at the time the loss or damage was incurred, is convicted of either operating under the influence of alcohol or a narcotic drug as defined in section one hundred and ninety-seven of chapter ninety-four, or of driving the wrong way on a one-way street or of operating at an excessive rate of speed as defined in section seventeen of chapter ninety, or of any similar violation of the law of any other state in which the loss or damage is sustained. No coverage is created under this clause, however, if the operator of the insured vehicle is himself convicted of any such violations as a result of his operation at the time said loss or damage was incurred.

The insured shall be entitled to payment in any of the cases described in clauses (b), (c) and (d) whether or not the facts disclose that he is or would have been entitled to recover in tort for such loss or damage against another.

The insurer may require as a condition of continuing such coverage in effect that a vehicle for which total damage has been paid shall pass a motor vehicle safety inspection test.

Insurers shall also make available to collision coverage policyholders additional coverage whereby the deductible of five hundred dollars under said collision coverage is reduced to an amount not less than three hundred dollars, except that an insurer may refuse to issue such additional coverage on the basis of accident frequency, claims paid, or conviction of moving violations of motor vehicle laws; 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. The charge for said additional coverage shall not exceed the actuarial cost of reducing the deductible from five hundred dollars to three hundred dollars.

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.

Insurers shall also make available additional coverage whereby an insured who has selected limited collision coverage shall be entitled to full payment without regard to comparative negligence or any deductible if any of the cases described in clauses (a) to (d), inclusive, of said limited collision coverage occur, provided the negligence attributable to such an insured is fifty per cent or less.

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.

Subject to such stated limits and conditions, exclusions, and limitations as may be approved by the commissioner, the insurer shall offer additional coverage, optional to the insured, for resulting loss of use of the insured vehicle.

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.

In all instances where the insurer so reinspects the vehicle prior to making payment, the check for payment shall not include a third party "loss payee".

The insurer or appraiser shall, upon request by either the insured or claimant or the insured's or claimant's chosen repair shop, send a copy of the appraisal within three days after the request is made. Failure to so comply shall result in penalties as determined by the board.

No insurer shall refuse to pay a claim under property damage liability insurance solely on the basis that its insured failed to comply with the provision of the policy relating to notice of accident by the insured; provided, that the claimant forwards to the insurer written notice of the accident within thirty days thereof containing information sufficient to identify the insured, the claimant, an itemized statement of the amount of the claim and also reasonably obtainable information with respect to the time, place and circumstances of the accident, the names and addresses of all operators and owners involved and of any available witnesses, and the location where the damage may be inspected by the insurer. Nothing contained herein shall prohibit an insurer so making a payment hereunder from pursuing against its insured whatever remedies or indemnification arise out of its insured's failure to comply with such policy provisions.

A person making claim against an insured on account of property damage or under clause (a) of limited collision coverage may submit to the insurer a written demand to such insurer for payment of the property damage or limited collision claim containing the information required in the notice of the accident. The insurer shall, within fifteen working days after receipt of such written demand respond in writing setting forth its decision as to whether it accepts the claim, accepts a part of the claim, rejects the claim, or, if applicable, the amount at which it is willing to compromise the claim and the reasons therefor. If such insurer's decision is unacceptable to the claimant, and in the event the claimant prevails in a legal action wherein he recovers substantially the full amount of the claim, and if the court, after such recovery is determined, determines that the insurer failed to respond or that the insurer's position as set forth in such response was unreasonable in light of the facts adduced at the trial, the amount of the claim in relation to any offer made in the response by such insurer or in relation to the amount of the damages determined at the trial, questions of liability and fact and any other pertinent matters, then the court may order that a penalty be included in the amount of the judgment not to exceed an amount equal to the determined damages plus costs and reasonable attorney's fees as determined by the court.

The claimant shall have the right to bring an action for a property damage liability claim or a limited collision claim in accordance with the provisions of section twenty-one of chapter two hundred and eighteen.

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. The commissioner shall have authority to promulgate regulations for enforcement of the provisions of this paragraph. Any repair shop located in the commonwealth which receives a completed work claim form for repairs to a motor vehicle and which fails to make certification as required herein 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 the said repairs, notwithstanding the provisions of section twenty-five of chapter two hundred and fifty-five.