

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)
Proposed Substitute Amendment to Draft
Model Act Regarding Insurer Auto-Body Steering*

*To be considered by the NCOIL Property-Casualty Insurance Committee on November 20, 2010.
Sponsored for discussion by Sen. Ruth Teichman (KS)*

Interested-party amendments are signified throughout the text by the following acronyms:

AIA/NAMIC/PCI: American Insurance Association/National Association of Mutual Insurance Companies/Property Casualty Insurers Association of America

ASA: Automotive Service Association

Belron: Belron US

Byrum: Rep. Barb Byrum (MI)

CA Autobody: California Autobody Association

PA Collision: Pennsylvania Collision Trade Guild

SCRS: Society of Collision Repair Specialists

Additions indicated by underline.

Deletions indicated by ~~striketrough~~.

(X) indicates that lettering may change.

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Section 1. Short Title

This Act shall be known as the *Model Act Regarding Insurer Auto-Body Steering*.

This Act shall be known as the *Model Act Regarding ~~Insurer Auto-Body Steering~~ Auto Repair Consumer Bill of Rights*. (AIA/NAMIC/PCI)

—OR—

This Act shall be known as the *Model Act Regarding ~~Insurer~~ Consumer Choice in Auto-Body Steering/Repair*. (Belron)

Section 2. Summary

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

This Act applies to personal lines motor-vehicle insurance policies, provides for consumer choice in selection of a-an auto body repair facility, ~~mandates certain disclosures, and establishes violations as unfair claims settlement practices~~ and prohibits the offering and acceptance of ~~incentives in exchange for the referral of a particular insured to a repair facility.~~ **(Belron)**

Section 3. Definitions

For the purposes of this Act,

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

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

PROPOSED NEW DEFINITION (AIA/NAMIC/PCI)

~~(X). “Consumer” means an individual who owns a motor vehicle.~~

- B. “Insured” means the party named on a policy as the individual with legal rights to the benefits provided by the policy.
- C. “Insurer” means an insurance company and/or any person authorized to represent the insurer with respect to a claim and who is acting within the scope of the person’s authority.
- D. “Policy” means a contract issued for private motor-vehicle insurance that is individually underwritten for personal, family, or household use.
- E. “Preferred Repair Facility” means a repair facility that meets an insurer’s customer service and repair standards.

E. “Preferred Repair Facility” means a repair facility that meets an insurer’s customer service and repair standards and is contractually or by agreement part of an insurer’s direct repair program. **(AIA/NAMIC/PCI)**

—OR—

E. ~~“Preferred Direct Repair Program Facility” means a repair facility that meets-participates in an insurer’s customer service and repair standards~~ direct repair program through a written agreement. **(AIA/NAMIC/PCI)**

—OR—

E. ~~“Preferred Repair Facility” means a repair facility that meets an insurer’s customer service and repair standards.~~ **(Belron)**

—OR—

E. “Preferred Repair Facility” means a repair facility that ~~meets an insurer’s customer service and repair standards~~ has any written or verbal agreement with the insurer regarding financial concessions to the insurer in exchange for referral of work. **(CA Autobody)**

—OR—

E. “Preferred Repair Facility” means a repair facility that meets an insurer’s ~~customer service and repair standards, participation requirements~~ and has entered into a contractual relationship with an insurer. (SCRS)

F. “Repair Facility” means a motor vehicle dealer, garage, body shop, or other commercial entity that undertakes the repair or replacement of those parts that generally constitute the exterior of a motor vehicle.

F. “Auto Body Repair Facility” means a motor vehicle dealer, garage, body shop, or other commercial entity that undertakes the repair of a motor vehicle or replacement of ~~those motor vehicle~~ parts ~~that generally constitute the exterior of a motor vehicle~~. (AIA/NAMIC/PCI)

—OR—

F. “Repair Facility” means a motor vehicle dealer, garage, body shop, or other commercial entity that undertakes the repair or replacement of those parts that generally constitute the exterior of a motor vehicle and/or undertakes the repair or replacement of window glass. (Byrum—*addition of window glass business*)

—OR—

F. “Repair Facility” means a motor vehicle dealer, garage, body shop, or other commercial entity that undertakes the repair of motor vehicles for compensation ~~or replacement of those parts that generally constitute the exterior of a motor vehicle~~. (CA Autobody and SCRS)

Section 4. Selection of Repair Facility, Insurer Prohibitions

Honoring Consumer Choice in the Selection of an Auto Body Repair Facility, Insurer Prohibitions
No Incentives for Referral (Belron)

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

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

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

A. require an insured or claimant to utilize preferred repair facilities as a prerequisite to settling or paying any claim arising under a policy or policies of insurance. ~~An insurer may recommend a repair facility prior to an insured or claimant choosing one~~ (AIA/NAMIC/PCI: *Under this language policyholders who have not selected a repair shop are provided information and benefits that insurers are not allowed to share with those policyholders who have selected a repair facility. This is a form of discrimination. All policyholders should be entitled to information that may benefit them. The language in section 3E should address the situation, the insurer can explain the program, and ask if the consumer wants a referral.*)

—OR—

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

- A. require an insured or claimant to utilize preferred repair facilities as a prerequisite to settling or paying any claim arising under a policy or policies of insurance. An insurer may recommend a repair facility prior to an insured or claimant choosing one. Recommendations should be made based on the level of training, equipment and certifications held by the repair facility and its staff (ASA)

—OR—

A. An insurer authorized to do business in ~~*[insert this state]*~~ shall not:

- 1.A. require ~~an that the~~ insured or claimant to utilize preferred repair facilities as a prerequisite to settling or paying any claim arising under a policy or policies of insurance. An insurer may recommend a repair facility prior to an insured or claimant choosing one
utilize a particular repair facility as a condition of payment of a claim unless otherwise provided pursuant to the terms of the motor vehicle insurance policy
- 2. Threaten, coerce or intimidate an insured into selecting a particular repair facility
- 3. Accept a rebate, gift, gift card, cash, or anything of value from a repair facility in exchange for the referral of a particular insured to that repair facility (Belron)

—OR—

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

- A. require or suggest that an insured or claimant ~~to~~ must utilize preferred repair facilities for obtaining an estimate or performing repairs as a prerequisite to settling or paying any claim arising under a policy or policies of insurance. ~~An insurer may recommend a repair facility prior to an insured or claimant choosing one~~ **(CA Autobody)**

—OR—

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

- ~~A. require an insured or claimant to utilize preferred repair facilities as a prerequisite to settling or paying any claim arising under a policy or policies of insurance. An insurer may recommend a repair facility prior to an insured or claimant choosing one~~
No insurance company representative or staff or independent appraiser shall recommend or require that repairs be made at any particular place or by a particular individual. An insurance appraiser shall not have any direct or indirect conflict of interest in the making of an appraisal. An insurance company or their representatives shall not in any manner whatsoever, attempt to directly or indirectly coerce, persuade, induce, intimidate or advise the consumer that the damaged vehicle must be, should be, or could be repaired at any particular location or by any particular individual or business. (PA Collision)

—OR—

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

A. require or suggest that an insured or claimant ~~to~~must utilize preferred repair facilities as a prerequisite to settling or paying any claim arising under a policy or policies of insurance. If requested by the insured or claimant, an~~An~~ insurer may recommend a repair facility prior to an insured or claimant choosing one

(X). require an insured or claimant to utilize a preferred repair facility, or specified location, to obtain an estimate as a prerequisite to settling or paying any claim arising under a policy or policies of insurance (SCRS)

B. engage in any act of coercion or intimidation causing or intended to cause an insured or claimant to utilize a preferred repair facility

B. engage in any act of coercion or intimidation causing or intended to cause an insured or claimant to utilize a preferred repair facility. Information provided to the insured or claimant by the insurer per Section 3E shall not be considered acts of coercion or intimidation; provided that benefits provided to the insured or claimant by the insurer shall not be considered acts of coercion or intimidation. (AIA/NAMIC/PCI)

~~—OR—~~

~~B. engage in any act of coercion or intimidation causing or intended to cause an insured or claimant to utilize a preferred repair facility~~

~~An insurer authorized to do business in this state may:~~

~~1. recommend a repair facility~~

~~2. educate the insured as to the features and benefits available to the insured under the policy (Belron)~~

~~—OR—~~

B. engage in any act of coercion or intimidation, or make any false, misleading or otherwise not wholly true statements, causing or intended to cause an insured or claimant to either utilize a preferred repair facility, or not utilize a non-preferred repair facility chosen by the insured or claimant. This includes, but is not limited to, repair turnaround time, claims processing time, repair warranties, repair cost, replacement car cost, and repair quality. (CA Autobody)

~~—OR—~~

~~B. engage in any act of coercion or intimidation causing or intended to cause an insured or claimant to utilize a preferred repair facility (PA Collision)~~

~~—OR—~~

B(X). engage in any act of direct or implied coercion, ~~or~~ intimidation, or use of disincentives causing or intended to cause an insured or claimant to utilize a preferred repair facility, or to avoid utilizing any non-preferred repair facility (SCRS)

C. recommend a repair facility once an insured or claimant has advised the insurer that one has been selected, or interfere with the insured or claimant's selection once it has been made

C. ~~recommend a~~No repair facility ~~once an insured or claimant has advised the insurer that one has been selected, or interfere with the insured or claimant's selection once it has been made~~shall offer a rebate, gift, gift card, cash, or anything of value to an insurer in exchange for the referral of a particular insured to that repair facility (Belron)

—OR—

C. recommend a repair facility ~~once an insured or claimant has advised the insurer that one has been selected, or interfere with the insured or claimant's selection once it has been made~~unless at the time of recommendation

1. the insured or claimant has been advised that they are under no obligation to use the insurer's recommended facility and

2. the insurer has determined the insured or claimant has not already chosen a repair shop

(X.) recommend a different repair facility without express permission from the insured or claimant, or otherwise interfere with the insured or claimant's selection once it has been made (CA Autobody)

—OR—

C. ~~recommend a repair facility once an insured or claimant has advised the insurer that one has been selected, or interfere with the insured or claimant's selection once it has been~~ (PA Collision)

—OR—

~~(X.)~~ recommend, or encourage the use of, any a repair facility once an insured or claimant has advised the insurer that one has been selected, or interfere with the insured or claimant's selection once it has been made (SCRS)

STAFF NOTE—AIA/NAMIC/PCI offered the following comment on subsection C:

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

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

D. pay a non-preferred repair facility selected by an insured or claimant less to complete a repair than the insurer would have paid a preferred repair facility for the same work unless the non-preferred repair facility accepts a lower price (AIA/NAMIC/PCI: *If not amended, this subsection enables price controls and will undermine the current competitive environment. In fact, it may actually drive out the "non-preferred" repair facility that is trying to be*

competitive. In the alternative, it provides a state-subsidized support for inefficiency among repair facilities.)

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

—OR—

~~D. pay a non-preferred repair facility selected by an insured or claimant less to complete a repair than the insurer would have paid a preferred repair facility for the same work (ASA: This could encourage a system seeking the lowest common denominator within the marketplace; punishing those shops with higher standards, etc.)~~

—OR—

~~D. pay a non-preferred repair facility selected by an insured or claimant less to complete a repair than the insurer would have paid a preferred repair facility for the same work~~No repair facility shall offer a rebate, gift, gift card, cash, or anything of value to an insured in exchange for that insured filing an insurance claim for auto body services

(X). Nothing in this section shall prohibit an insurer from entering into a preferred provider agreement or from participating in any direct repair program or direct repair network with repair facilities. (Belron)

—OR—

~~D. pay a non-preferred repair facility selected by an insured or claimant less to complete a repair than the insurer would have paid a preferred repair facility for the same work~~ limit payment for repairs to a non-preferred repair facility selected by an insured or claimant based on the amount the insurer would have either paid, or not paid, a preferred repair facility (CA Autobody)

—OR—

~~D~~(X). An insurer may not pay a non-preferred repair facility selected by an insured or claimant less to complete a repair than the insurer would have paid a preferred repair facility for the same work. (PA Collision—STAFF NOTE: This is a technical change that follows PA Collision's proposed amendment to Section 4A on page 4.)

—OR—

~~D~~(X). pay a non-preferred repair facility selected by an insured or claimant settle a claim for less to complete a repair than the insurer would have paid a preferred repair facility ~~for to~~ perform the same work

(X). utilize agreements negotiated with preferred repair facilities for the cost of labor, materials, rates or procedures to settle claims with an insured or claimant who does not select a preferred repair facility

(X). suggest to an insured or claimant that utilizing a non-preferred repair facility may result in delays, or handle the claim in a less efficient manner if the customer chooses a non-preferred repair facility

(X). suggest to an insured or claimant that guarantees apply only with the selection of a preferred repair facility; suggest that another repair facility does not guarantee their repair work unless known to be true and accurate; or suggest that the carrier guarantees or warrants the repair unless the carrier directly provides their warranty of the repair work performed in writing to the consumer. (SCRS)

PROPOSED NEW SECTION (AIA/NAMIC/PCI)

Section (X). Selection of Repair Facility, Repairer Facility Prohibitions

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

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

B. Any violation of this Section (X) shall be a class [insert appropriate class] misdemeanor and a violation of the Unfair and Deceptive Trade Practices Act [or other comparable state law].

Section 5. Disclosure

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

- A. the insured or claimant is under no obligation to use the preferred repair facility
- B. the insurer or its third-party representative has ~~a financial~~ an ownership interest in such facility, if such an interest exists (AIA/NAMIC/PCI)

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

- A. the insured or claimant is under no obligation to use the preferred repair facility
- B. the insurer or its third-party representative has a financial interest in such facility, if such an interest exists
- C. the recommendation is based on the level of shop staff training, equipment criteria, and certifications (ASA)

~~—OR—~~

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

- ~~A. the insured or claimant is under no obligation to use the preferred repair facility~~
- ~~B. the insurer or its third-party representative has a financial interest in such facility, if such an interest exists (Belron)~~

~~—OR—~~

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

- A. the insured or claimant is under no obligation to use ~~the any~~ preferred repair facility
- B. the insurer or its third-party representative has a financial interest in such facility, if such an interest exists
- C. the insurer or its third-party representative receives discounts and other financial concessions from the preferred repair facility as a condition of being considered a preferred repair facility, unless no such agreement exists

Such disclosures must be made in the same method as the recommendation (e.g., verbal or written). (CA Autobody)

~~—OR—~~

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

- A1. the insured or claimant is under no obligation to use ~~the a~~ preferred repair facility or other particular place of business or a particular individual
- B2. the insurer or its third-party representative has a financial interest in such facility, if such an interest exists

B. Preferred Repair Facilities and or Direct Repair Program contracted repair facilities shall provide in full view a “Consumer Awareness Board” with a copy or copies of the contracted

repair agreement or repair agreements between the partner insurance company or companies and the participating repair facility including the “contracted estimating guidelines” to be followed as per the insurance company guidelines. A sign designating this location to read CONSUMER AWARENESS and DISCLOSURE AREA. (PA Collision)

—OR—

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

A1. the insured or claimant is under no obligation to use the preferred repair facility

B2. the insurer or its third-party representative has a financial interest in such facility, if such an interest exists

3. the insurer or its third-party representative has a financial interest in repair cost savings through the contractual relationship with a preferred repair facility, if such an interest exists

a. the insured or claimant shall be offered a copy of the agreement between the insurer and the preferred repair facility prior to the signing of a repair authorization

B. An insurer authorized to do business in this state shall file the terms of the agreement used to contract preferred repair facilities in writing to *[insert state department]*. (SCRS)

Section 6. Violations and Penalties

A. The *[insert appropriate state agency]* shall investigate, with the written authorization of the insured or claimant, any written complaints received pursuant to this Act, regardless of whether such written complaints are submitted by an individual or a repair facility. For the purpose of this section, any insurer utilizing a third-party representative shall be held accountable for any violation of this section by such third-party representative.

B. Violations of this Act shall constitute *[insert state]* unfair claims settlement practices and shall be subject to applicable state fines and penalties.

~~A. The *[insert name of regulatory agency]* ~~*appropriate state agency*~~ shall investigate, with the written authorization of the insured or claimant, any written complaints regarding insurers received pursuant to this Act, ~~regardless of whether such written complaints are submitted by an individual or a repair facility. For the purpose of this section, any insurer utilizing a third-party representative shall be held accountable for any violation of this section by such third-party representative.~~~~

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

~~BC.~~ Violations of Sections 4 and *[proposed new section on page 8]* of the Act shall constitute *[insert state]* unfair claims settlement practices and shall be subject to applicable state fines and penalties. (AIA/NAMIC/PCI)

—OR—

~~A. The [insert appropriate state agency] shall investigate, with the written authorization of the insured or claimant, any written complaints received pursuant to this Act, regardless of whether such written complaints are submitted by an individual or a repair facility. For the purpose of this section, any insurer utilizing a third party representative shall be held accountable for any violation of this section by such third party representative.~~

~~B. Violations of the Act shall constitute [insert state] unfair claims settlement practices and shall be subject to applicable state fines and penalties.~~

Due to variations in penalties and violations and governance thereof in various jurisdictions, states will necessarily need to refer to their own statutes for the purposes of enforcement. (Belron)

~~—OR—~~

A. The [insert appropriate state agency] shall investigate, with the written authorization of the insured or claimant, any written complaints received pursuant to this Act, regardless of whether such written complaints are submitted by an individual or a repair facility. For the purpose of this section, any insurer utilizing a third-party representative shall be held accountable for any violation of this section by such third-party representative.

B. Violations of the Act shall constitute [insert state] unfair claims settlement practices by the insurer and each occurrence of violation shall be subject to applicable state fines and penalties. **(CA Autobody/SCRS)**

Section 7. Effective Date

This Act shall take effect on [insert date], applying to personal lines motor-vehicle insurance policies either written to be effective or renewed on or after ~~nine (9)~~eighteen (18) months from the effective date of the bill. **(AIA/NAMIC/PCI)**

The following parties submitted general comments in lieu of markups to specific language:

National Committee for Consent Decree Enforcement
Penn Dell Auto Body Inc.

* *Based on Rhode Island and Virginia statutes*

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