

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
233 Richmond Street
Providence, RI 02903

**NOTICE OF PROPOSED ADOPTION OF REGULATION, AMENDMENT TO
REGULATION AND PUBLIC HEARING**

Notice is hereby given, in accordance with R.I. Gen. Laws §§ 42-14-17 and 42-35-3, that the Department of Business Regulation (“Department”) proposes to adopt and amend the following Regulations:

Insurance Regulation 42– Motor Vehicle Damage Appraisers

The regulation is designed to establish standards and procedures for the issuance of licenses and govern the conduct of licensees

Insurance Regulation 43 – Insurance Claims Adjusters

The proposed amendments are designed to establish standards and procedures for the issuance of licenses and govern the conduct of licensees.

Notice is also hereby given, in accordance with R.I. Gen. Laws § 42-35-3, that the Department of Business Regulation will hold a public hearing beginning at 10:00 a.m. on January 11, 2006 in the Main Hearing Room of the Department of Business Regulation, 233 Richmond Street, Providence, Rhode Island 02903, regarding the Proposed Adoption and Amendment.

Copies of the Proposed Regulation and the Proposed Amended Regulation are on file at the Department and copies may be obtained from the Legal Division, Department of Business Regulation, 233 Richmond Street, Providence, Rhode Island 02903 during normal working hours on regular business days or by mail upon request. The Proposed Regulation and the Proposed Amended Regulation may also be obtained from the Department’s website www.dbr.state.ri.us.

In the development of the Proposed Regulation and the Proposed Amended Regulation, consideration was given to overlapping approaches, overlap and duplication with other statutory and regulatory provisions and economic impact on small business and cities and towns.

All interested persons may submit their views, data or arguments regarding the Proposed Regulation and the Proposed Amended Regulation, including information relating to alternative approaches, duplication or overlap with other state rules or regulations and the economic impact of the Proposed Regulation and the Proposed Amended Regulation on small business and/or cities and towns, orally at the public

hearing or in writing, either by delivering the same in person or United States mail with postage pre-paid thereon to the Department of Business Regulation, 233 Richmond Street, Providence, Rhode Island 02903 attention Elizabeth Kelleher Dwyer, Hearing Officer or by e-mail to elizabeth_dwyer@dbr.state.ri.us

ALL WRITTEN SUBMISSION MUST BE RECEIVED NOT LATER THAN JANUARY 11, 2006 AT 10:00 A.M.

The hearing room is accessible to the handicapped. Individuals requesting interpreter services for the hearing impaired must notify the Office of Legal Counsel at (401) 222 5400 or TDD 711 not less than ninety-six (96) hours in advance of the hearing date.

A. Michael Marques
Director, Department of Business Regulation

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PROPOSED
INSURANCE REGULATION 42

MOTOR VEHICLE DAMAGE APPRAISERS

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Section 1 ***Authority***

This Regulation is promulgated pursuant to R.I.G.L. §§ 27-10.1-1 *et seq.* and 42-14-17.

Section 2 ***Purpose and Applicability***

This regulation shall apply to any person, partnership, association, or corporation that practices as a business the appraising of damages to motor vehicles being repaired under insurance policies.

The purpose of this regulation is to establish standards and procedures for the issuance of motor vehicle damage appraiser licenses and to govern the conduct of motor vehicle damage appraisers.

Section 3 ***Definitions***

As used in this Regulation:

- (A) "Aftermarket Part" means a motor vehicle body replacement part that is not an original equipment manufacturer part
- (B) "Applicant" shall mean a person applying for a motor vehicle damage appraiser license.
- (C) "Damaged Motor Vehicle Body Part" means any part of the body of a motor vehicle which is damaged as the result of a collision with another vehicle or object. Such parts shall include fenders, bumpers, windshields, hubcaps, head lamp and tail lamp assembly parts, glass and similar components of motor vehicle bodies as distinguished from the chassis, frame, seats, motor, transmission, air conditioning condenser, radiator, alloy wheels, and other accessories for propulsion and general running gear of motor vehicles.
- (B) "Department" shall mean the Department of Business Regulation.
- (C) "Director" shall mean the Director of the Department or his or her designee.
- (D) "License" shall mean the motor vehicle damage appraiser license issued by the Department to a person engaged in the business of motor vehicle damage appraising.
- (E) "Licensee" shall mean a person holding a motor vehicle damage appraiser license.
- (F) "NAIC" shall mean the National Association of Insurance Commissioners.
- (G) "Original Equipment Manufacturer Part" or "OEM part" means a motor vehicle body replacement part manufactured by the manufacturer of the motor vehicle being repaired.
- (H) "Person" shall mean any individual, partnership, corporation, limited liability company, or any other legal entity, however formed.
- (I) "Uniform individual application" means the current version of the NAIC Uniform Individual Application for resident and nonresident individuals.
- (J) "Uniform business entity application" means the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.

Section 4 License Required

- (A) No Person may engage in the business of motor vehicle damage appraising without first obtaining a License from the Department.
- (B) Every Applicant for a new or renewal License must submit an application or a renewal application to the Department. In order to be licensed, Applicants must

fulfill the requirements set forth in said application, successfully pass an examination and pay the applicable fees to the Department.

- (C) If applicable, an applicant must file an Affidavit, in the form directed by the Department, at the time of licenses that he, she or it operates separate and apart from any body repair shop or motor vehicle repair shop of any new or any new or used automobile dealership.
- (D) A person, partnership, association or corporation shall not act or hold him/her or itself out as an appraiser in this state unless the person is licensed as an appraiser by the State of Rhode Island. An individual person who is associated with a partnership, association or corporation must obtain both an individual license and a business entity license for the partnership, association or corporation. Application for an individual person shall be made using the Uniform Individual Application as modified and provided by the Department.
- (E) A business entity acting as an appraiser is required to obtain an appraiser license. Application shall be made using the Uniform Business Entity Application as modified and provided by the Department. Before approving the application, the department shall find that:
 - (1) The business entity has paid the applicable fees; and
 - (2) The business entity has designated a licensed motor vehicle damage appraiser responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.
- (F) An appraiser doing business under any name other than the appraisers' legal name is required to notify and obtain the consent of the Department prior to using the assumed name.
- (G) Each appraiser license is issued on a biennial basis. An appraiser who obtains a license during the license term shall be issued a license for the time period remaining and will have to renew at the expiration of the License, regardless of the period of time he, she or it has been licensed. The Department does not prorate license fees.
- (H) A sole proprietor must hold an individual license and must obtain approval for any assumed name pursuant to section 4(f), however, a business entity license is not required for the assumed name.
- (I) A licensed appraiser that is unable to comply with license renewal procedures due to military service or some other extenuating circumstance (e.g., a long-term medical disability) may request a waiver of those procedures. The appraiser may also request a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.

- (J) The Department may contract with non-governmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees and data, related to licensing that the Department may deem appropriate.

Section 5 Examination

- (A) An individual applying for an appraiser license shall pass a written examination unless exempt pursuant to Section 6 of this Regulation. The examination shall test the knowledge of the individual concerning the duties and responsibilities of an appraiser and the insurance laws and regulations of this state.
- (B) The Department may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee for said examinations.
- (C) An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall register for another examination and is required to pay the fees and complete the necessary forms before being rescheduled for another examination.

Section 6 Exemptions from Examination

An appraiser who allows his, her or its license to expire may, within twelve (12) months from the due date of the renewal, reinstate the license without the necessity of passing a written examination. A penalty in the amount of an additional fee is required along with the unpaid renewal fee and shall be paid at the time of reinstatement. This exemption is only available if the application is received within twelve (12) months of the due date and the Applicant was in good standing in this state at the time of renewal. The Applicant is required to file a renewal application, file the appropriate affidavit and pay all applicable fees.

Section 7 Conduct

- (A) A licensee shall inform the Department in writing of any change of address or any change of name within thirty (30) days of the change.
- (B) If a licensee holds an insurance license in any other state, he or she shall immediately notify the Department if his or her insurance license is suspended or revoked or not renewed for any reason.
- (C) Licensees shall comport themselves in accordance with all Rhode Island laws including but not limited to R.I.G.L. § 27-10.1-6 and all regulations issued thereunder.
- (D) Each appraiser, while engaged in appraisal duties, shall carry the license issued to that appraiser and shall display it, upon request, to an owner whose vehicle is

being inspected, to the auto body shop representative involved, or to any authorized representative of the Department.

- (E) The appraiser shall prepare and leave a legible copy of his or her independent appraisal with the auto body shop selected to make the repairs at time of initial inspection, which appraisal shall contain the name of the insurance company ordering it, if any, the insurance file number, the number of the appraiser's license, and the proper identification number of the vehicle being inspected. All damage unrelated to the incident or accident that occasioned the appraisal of the vehicle, or old damage, shall be clearly indicated in the appraisal. If it becomes impracticable to leave a legible copy of the appraisal at the time of initial inspection, whether due to unavailability of the required information or for other good explained reason, the appraiser can either leave, fax, e-mail or mail a legible copy of the appraisal to the auto body shop within a period not later than 24 hours of the initial inspection by the appraiser.
- (F) The appraiser shall not obtain a competitive estimate from another auto body shop unless the owner of that other shop, or his or her authorized agent, has inspected the vehicle. No competitive estimate shall be obtained by the use of photographs, telephone calls, or in any manner other than a personal inspection.
- (G) No appraiser shall request that repairs be made in a specified auto body shop. Once the insured or claimant has advised the insurer that an auto body repair shop has been selected, the appraiser may not recommend that a different auto body repair shop be selected to repair the automobile.
- (H) Every appraiser shall re-inspect damaged vehicles when supplementary allowances are requested by the auto body shops, unless the request was not for supplementary allowances but for allowances previously considered, discussed and disallowed, in which case they would not be supplementary.
- (I) No appraiser shall receive directly or indirectly any gratuity or other consideration in connection with his or her appraisal services from any person except his or her employer, or, if self-employed, his or her customers.
- (J) No appraiser shall traffic in automobile salvage if it is obtained in any way as a result of appraisal services rendered by the appraiser.
- (K) No appraiser shall obtain an estimate from an unlicensed automobile body repair shop nor shall any appraiser agree on a price for repairing a damaged motor vehicle with an unlicensed automobile body repair shop. Nothing contained in this section shall be construed to preclude an appraiser from dealing with any entity not subject to the licensing provisions of R.I.G.L. § 5-38-4.
- (L) Where applicable, licensees shall comply with the requirements of R.I.G.L. § 31-46-1.1 regarding the classification of salvage vehicles.
- (M) Once the insured or claimant has advised the appraiser that an auto body repair shop has been selected, the appraiser may not recommend that a different auto body repair shop be selected to repair the automobile.

- (N) No appraiser shall request or advise any motor vehicle owner or operator to operate his or her vehicle on any public thoroughfare for the purpose of obtaining a written estimate of damage at a drive-in claims center, unless it is ascertained that the vehicle meets safety requirements as determined by the department of transportation. A vehicle is unsafe for driving under this section if the vehicle has (1) damage to its unitized body construction; (2) damage to its hood catch which would probably result in an unexpected opening; (3) damage to the front suspension; (4) metal in contact with any tire; (5) any door which can't be easily opened or which opens unexpectedly; (6) inoperable tail lights; (7) broken glass affixed to the vehicle or a cracked windshield; or (8) any other condition deemed to be unsafe by the department of transportation pursuant to rules and regulations.
- (O) An appraiser appraising a claim for motor vehicle physical damage shall assure that the claimant is notified in writing if he or she intends to specify the use of aftermarket parts. To comply with this provision written notice may be provided on the original appraisal.
- (P) An appraiser shall not require the use of aftermarket parts when negotiating repairs of vehicles which are less than thirty (30) months beyond the date of manufacture, unless written consent from the vehicle owner to install aftermarket parts has been obtained.
- (Q) Whenever aftermarket parts are used for repairs to physically damaged motor vehicles, the following standards shall apply:
- (1) The aftermarket parts shall be at least equal in kind and quality to the OEM parts in terms of fit, quality and performance;
 - (2) To the extent practical, an insurance company shall not require the use of multiple aftermarket parts distributors to provide parts for a single repair;
 - (3) Insurers specifying the use of aftermarket parts shall make allowances for the reasonable cost of any modifications to the aftermarket parts which may become necessary when making the repair, and for the cost of fitting, removing, and/or handling aftermarket parts which do not result in the vehicle being repaired to its condition prior to the loss;
 - (4) If the aftermarket part specified by the insurer does not result in the vehicle being repaired to its condition prior to the loss, the insurer shall then specify the use of an OEM part;
 - (5) The automobile body shop shall promptly notify the appraiser if the aftermarket part specified by the insurer does not result in the vehicle being repaired to its condition prior to the loss and permit the appraiser to reinspect the vehicle and make appropriate supplemental authorizations, if necessary;

- (6) The automobile body shop shall provide documentation of aftermarket parts, which do not meet the requirements of this section, as reasonably requested by the insurer. The insurer shall be permitted to exercise any available rights of recovery against the aftermarket parts distributor.
- (R) An appraiser shall not require that any insured use a particular rental car agency. In accordance with R.I.G.L. § 27-9.1-4(17) appraisers are not precluded from providing the name(s) of Rhode Island licensed rental car agencies with which arrangements have been made with respect to rental services.
- (S) All persons, partnerships, corporations, or individuals engaged in the motor vehicle physical damage appraisal business shall operate separate and apart from any body repair shop, or motor vehicle repair shop, of any new or used automobile dealership. Those engaged in this business shall retain a permanent established address affording themselves to the general public during normal business hours.
- (T) Records shall be maintained for at least 5 years after the termination of the appraisal and shall be open to examination by the Department at all times.

Section 8 **Ethical Requirements**

- (A) An appraiser shall not undertake the appraisal of any motor vehicle if the damage to the motor vehicle exceeds the appraiser's current expertise.
- (B) An appraiser shall not knowingly make any oral or written material misrepresentations or statements which are false or maliciously critical and intended to injure any person engaged in the business of insurance to any insured client or potential insured client.
- (C) An appraiser shall make an independent appraisal of any motor vehicle damage and shall not be influenced by the adjuster or insurer requiring the appraisal, nor the body shop representative selected by the claimant to repair the vehicle.

Section 9 **License Denial, Non-Renewal or Revocation**

- (A) The Department may deny an Application for a License or revoke or suspend a License, or deny renewal of a License for the following:
 - (1) Failing to respond to any inquiry from the Department within 21 calendar days of receipt of such inquiry.
 - (2) Providing incorrect, misleading, incomplete or materially untrue information in the License application.
 - (3) Violating any insurance law, or any regulation issued thereunder, subpoena or order of the Department or of another state's insurance commissioner.

- (4) Obtaining or attempting to obtain a license through misrepresentation or fraud.
 - (5) Being convicted of a felony.
 - (6) Having admitted or been found to have committed any insurance unfair trade practice or insurance fraud.
 - (7) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in this state or in another place.
 - (8) Having a motor vehicle damage appraiser license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory.
 - (9) Forging another's name to any document.
 - (10) Cheating on an examination, including improperly using notes or any other reference material, for a motor vehicle damage insurance appraiser license.
 - (11) Failing to comply with an administrative or court order imposing a child support obligation.
 - (12) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.
- (B) In the event that the action by the Department is to deny an application for or not renew a license, the Department shall notify the Applicant or licensee, in writing, the reason for the non-renewal or denial of the license. The Applicant or licensee may make written demand upon the Department within ten days for a hearing before the Department to determine the reasonableness of the Department's action. The hearing shall be held pursuant to R.I.G.L. § 42-35-9 through 14.
- (C) The license of a business entity may be suspended, revoked or refused if the Department finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the Department nor corrective action taken.
- (D) In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a fine and/or any other appropriate remedies according to R.I.G.L. § 42-14-16.
- (E) The Department shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by R.I.G.L. §§ 27-10.1-1 *et seq.*, 42-14-16 and/or this Regulation against any person who is under investigation for or charged with a violation even if the person's license or registration has been surrendered or has lapsed by operation of law.

Section 10 ***Reporting of Actions***

- (A) The appraiser shall report to the Department any administrative action taken against the appraiser in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

- (B) Within thirty (30) days of the initial pretrial hearing date, the appraiser shall report to the Department any criminal prosecution of the appraiser taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

Section 11 ***Severability***

If any provision of this Regulation or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Regulation are severable.

Section 12 ***Effective Date***

This Regulation shall be effective twenty (20) days from the date of filing with the Secretary of State.

EFFECTIVE DATE: February , 2006