

**State of Rhode Island and Providence Plantations**  
**DEPARTMENT OF BUSINESS REGULATION**  
*Division of Insurance*  
**1511 Pontiac Avenue, Bldg. 69-2**  
**Cranston, Rhode Island 02920**

**CONCISE EXPLANATORY STATEMENT**

**Insurance Regulation 108 – Auto Body Labor Rate Survey**

The Department of Business Regulation (“Department”) hereby adopts amendments to Insurance Regulation 108 effective March 17, 2016 and makes this statement in accordance with R.I. Gen. Laws § 42-35-2.3. The Department makes these amendments in order to remove language that was relevant only to the 2007 survey; clarify the obligations of insurers with less than 1% market share and update the regulation to comply with the amendments made to R.I. Gen. Laws § 27-29-4.4 by the legislature in 2015.

There are seven differences between the text of the proposed rule as published in accordance with R.I. Gen. Laws § 42-35-3 and the rule as adopted. Those differences are:

1. Section 3 has been rewritten to clarify the modifiers to 1%, substitute “determine” for “establish” and substitute “utilizing” for “adopting.”
2. Section 4(g) has been rewritten to substitute “utilizing” for “adopting.”
3. Section 6(1) was amended to substitute the word “that” for “who.”
4. Section 7(2)(f) was amended by substituting language requiring overall certification instead of the proposed certification to portions of the statute.
5. Section 7(2)(g) was amended to make the word rate plural to reflect that insurers may establish multiple rates.
6. Section 7(6) was amended to make the language match section 3 to prevent any confusion.
7. Exhibit A was amended to provide for indication as to whether the surveyed shop was a Class A or B shop and to indicate that an auto body shop may report more than one rate.

The Department receives other comments which it declined to address by changes in the regulation. Those comments were as follows:

1. A number of commenters requested that the ability to survey by Group be reinstated to section 6. This provision was not removed from the

regulation. Rather, it was moved to section 5 for purposes of clarification. This movement did not alter the ability of insurers to perform the survey by group.

2. The Department declined to add additional language allowing insurers to set different rates for different functions as this is allowed under the current language and is done by many insurers and the Department did not believe further language was necessary.
3. The Department declined to add language concerning the effect of the questionnaire or the survey on the question of the rate which the insurer must pay for repairs.

Attached is the regulation showing the proposed amendments and the differences between the proposed text and regulation as adopted.

Dated – February 26, 2016

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**INSURANCE REGULATION 108**  
**AUTO BODY LABOR RATE SURVEY**

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**Section 1**     *Authority*

This Regulation is promulgated in accordance with R.I. Gen. Laws. §§ 27-29-4.4 and 42-14-17.

**Section 2**     *Purpose*

The purpose of this Regulation is to implement the provisions of R.I. Gen. Laws §§ 27-29-4.4.

**Section 3**     *Applicability*

Each insurer that writes one percent (1%) or more of the total premium volume of Motor Vehicle Liability Insurance during the immediately preceding calendar year shall conduct an auto body labor rate survey in accordance with R.I. Gen. Laws. §§ 27-29-4.4 and this Regulation. Insurers writing less than one percent (1%) of the total premium volume of Motor Vehicle Liability Insurance during the preceding calendar year shall determine a prevailing labor rate either by voluntarily conducting a survey or a prevailing labor rate filed by another insurer.

**Section 4**     *Definitions*

As used in this Regulation:

- A. "Auto body labor rate survey" is an analysis of information gathered from auto body repair shops regarding the rates of labor that repair shops charge in a certain geographic area.
- B. "Contract Rate" shall mean any labor rate to which an auto body repair facility and an insurer have agreed in a formal agreement and/or written contract.
- C. "Department" shall mean the Department of Business Regulation, Insurance Division.
- D. "Full Collision Repair Auto Body Facilities" are those facilities designated as such in Commercial Licensing Regulation 4.
- E. "Motor Vehicle Liability Insurance" shall mean those lines of insurance reported by the insurer in an insurers' annual statement as other private passenger auto liability, other commercial auto liability, private passenger auto physical damage, and commercial auto physical damage.
- F. "Insurance Group" shall mean a number of insurers within a holding company who are assigned a single group code by the National Association of Insurance Commissioners.
- G. "Prevailing auto body labor rate" means the rate determined and set by an insurer as a result of conducting an auto body labor rate survey, or adopting utilizing the rate set by another insurer if permitted by section 7(6) below, in a particular geographic area, and used by insurers as a basis for determining the cost to settle automobile property damage claims.

**Section 5**      **Determination of Market Share**

The percentage of premium volume of Motor Vehicle Liability Insurance for the preceding calendar year will be determined by the Department in accordance with the premium reported in an insurers' annual statement. ~~Prior to May 1 of the subsequent calendar year, the Department will publish on its website a list of those insurers who meet the applicability requirement. Insurers may choose to survey on an Insurance Group basis. If so, one questionnaire may be sent for the Insurance Group indicating all of the insurers within that group writing Motor Vehicle Liability Insurance in Rhode Island.~~ The one percent (1%) premium volume may be reached either by an individual insurer or by an Insurance Group whose writings reach one percent (1%) or more when combined. ~~For the 2007 report only, premium volume will be determined based upon calendar year 2005 data.~~

**Section 6**      **Procedure and Deadlines**

1. Prior to May 1 of each calendar year, the Department will publish on its website a list of those insurers that meet the applicability requirement.
2. Each insurer to which this Regulation applies shall, prior to June 1 of each calendar year, send a questionnaire substantially in the form attached hereto as Exhibit A to Full Collision Repair Auto Body Facilities. Separate and distinct questionnaires shall be sent to each classification of auto body repair facilities as designated by the Commercial Licensing section of the Department.
3. Concurrent with the posting of a list of insurers required to conduct a survey, the Department's Commercial Licensing Division will provide a list of Full Collision Repair Auto Body Facilities with identification of Classification A and B shops which insurers must survey for that years' compliance. The list will be posted on the Department's website.
4. Insurers will omit those Full Collision Repair Auto Body Facilities with whom the insurer, or Insurance Group, if reporting on a group basis, has a formal agreement and/or written contract to pay contract rates in order to provide auto body repair services.
5. Insurers will send the questionnaire to all of the Full Collision Repair Auto Body Facilities that remain after deletion of those facilities indicated in subsection 5 4 above.

**Section 7**      **Report of Labor Rate Survey to the Department**

1. The report must be filed no later than September 1 of each calendar year.
2. The Report of the Labor Rate Survey must include the following:
  - a. A list, including the name and address, of all Full Collision Repair Auto Body Facilities to which the labor rate survey was sent.
  - b. A list of the Full Collision Repair Auto Body Facilities that failed to respond to the questionnaire within the time specified by the insurer.
  - c. A list of questionnaires that were not taken into consideration by the insurer in its analysis of the survey, including the reason that each such questionnaire was rejected for consideration.
  - d. Results of the questionnaires considered by the insurer.
  - e. The total number of shops surveyed.

- f. A description of the formula or manner in which the insurer has calculated or determined the prevailing labor rate which it pays to auto body repair facilities including certification of compliance with R.I. Gen. Laws § 27-29-4.4 and this regulation.
  - g. The separate prevailing labor rate(s) established by the insurer for each classification of full collision licensed auto body repair facilities.
  - h. If the calculation or formula indicated in subsection f above is not based on the results of the questionnaires identified in subsection d above, a complete explanation as to why it is not so based.
3. Insurers should include, in detail, all costs associated with complying with this Regulation.
4. Insurers may choose to report on an Insurance Group basis. If so, one Labor Rate Survey may be filed with the Department for the Insurance Group indicating all of the insurers within that group writing Motor Vehicle Liability Insurance in Rhode Island.
5. The Department will publish the prevailing labor rates within a reasonable time after receipt and compilation of the surveys submitted by insurers.
6. Insurers writing less than one percent (1%) of the total premium volume of Motor Vehicle Liability Insurance during the preceding calendar year shall determine a prevailing labor rate(s) by either voluntarily conducting a survey or utilizing a prevailing labor rate(s) filed by another insurer and file with the Department no later than October 1<sup>st</sup>.

## **Section 8**      **Questionnaire**

1. Each insurer to which this Regulation applies shall utilize a survey based on the questionnaire attached hereto as Exhibit A. Insurers may customize the questionnaire with formatting; however, the substance must be in accordance with Exhibit A.
2. Insurers shall specify a date upon which the questionnaire must be returned to the insurer. The date specified must grant at least thirty (30) days notice for response.
3. Insurers may allow Full Collision Repair Auto Body Facilities to respond electronically (e.g. by email); however, insurers must allow response by hard copy if the Full Collision Repair Auto Body Facility does not consent to electronic submission.
4. Insurers may reject any questionnaire that is not properly completed or does not provide the full information requested and are not required to provide notification

to the Full Collision Auto Body Facility. Insurers shall keep detailed records for such rejection to allow audit by the Department. Insurers may be ordered by the Department to consider any questionnaire so “rejected” to be accepted if the Department finds that enough information has been provided to allow for consideration of the questionnaire. All questionnaires and all other information regarding the survey shall be maintained by the insurer for a minimum of five years.

**Section 9**      **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 10**    **Effective Date**

This Regulation shall be effective as indicated below.

EFFECTIVE DATE:            October 2, 2006  
AMENDED:                    March \_\_\_\_, 2016

Exhibit A

**LABOR RATE QUESTIONNAIRE**

To: \_\_\_\_\_ (Auto Body Repair Facility)

From: \_\_\_\_\_ Insurance Company

**Instructions:** This questionnaire should be completed by the auto body repair facility to which it is addressed and returned to \_\_\_\_\_ Insurance Company at **[insert address]** no later than **[insert due date]**. If the information is not complete the survey may be rejected.

Auto Body Repair Facility Classification                      **A**                      **B** (circle one)

Hourly Rate(s) Charged – Please indicate the hourly rate charged by your facility for auto body repair work. If the rate charged varies, please indicate each and every rate actually charged for all categories of customers, including but not limited to insurance related claims versus non-insurance related claims. The information on hourly rate charged must include all labor rate agreements other than those with insurance companies. This information must include, but is not limited to, labor rate agreements with any and all rental car companies for the repair of rental vehicles, labor rate agreements with any and all vehicle leasing companies for the repair of leased vehicles, labor rate agreements with the State of Rhode Island for the repair of state vehicles, and labor rate agreements made with the United States government for the repair of government vehicles.

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Supporting Documentation: Please provide a full and complete description of all of the documents that evidence each actual rate charged (i.e. for each category of customer invoices, rates posted in shop, customer receipts, estimates or other applicable documentation). Please note that you may be requested to produce documentary evidence supporting your response to the Department of Business Regulation, Commercial Licensing Division.

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Complete Description: Please describe the manner in which you calculate each labor rate charged, providing a complete description of the components, including, but not limited

to salary costs, overhead (including a complete and detailed description of the costs you include in overhead) and margin for profit.

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**FAILURE TO COMPLETE THIS QUESTIONNAIRE IN FULL MAY RESULT  
IN ITS EXCLUSION FROM THE AUTO BODY LABOR RATE SURVEY FILED  
WITH THE DEPARTMENT OF BUSINESS REGULATION.**

I declare under penalty of perjury that the information provided is true and correct.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_