

STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
233 RICHMOND STREET
PROVIDENCE, R.I. 02903

NOTICE OF PROPOSED AMENDMENT
AND PUBLIC HEARING

Pursuant to R.I. Gen. Laws §§ 5-38-27, 42-14-17, and 42-35-3, the Director proposes to amend the following Regulation:

COMMERCIAL LICENSING REGULATION 3-
AUTOMOBILE BODY SHOP STORAGE RATES

The purpose of the amendment is to set forth guidelines and requirements to automobile body repair shop licensees, insurers, and the public of storage rate regulation to ensure compliance with R.I. Gen. Laws § 5-38-1 *et seq.* The actions and information required by this regulation are declared to be necessary and appropriate to the public interest. In the development of the amendment, consideration was given to overlapping approaches and duplication with other statutory and regulatory provisions, and economic impact on small business and municipalities.

The proposed amendments are intended to be permanent. Notice is also given, in accordance with R.I. Gen. Laws § 42-35-2, that the Department will hold a public hearing beginning at **10:00 a.m. on March 26, 2008**, in its Main Hearing Room, 233 Richmond Street, Providence, R.I. 02903. This is the same proposed regulation noticed for hearing on June 19, 2007. It is being re-noticed to effect compliance with R.I. Gen. Laws § 42-35-3(a)(5). A summary of non-technical amendments between the existing Commercial Licensing Regulation 3 and proposed Commercial Licensing Regulation 3 are available on the Department's website, www.dbr.state.ri.us or may be obtained from the Legal Division of the Department at 233 Richmond Street, Providence, RI 02903 by mail or in person during regular business hours.

All interested persons may submit their comments orally at the public hearing or in writing, to the Department to: Neena Sinha Savage, Esq., Hearing Officer or by email to Neena_Savage@dbr.state.ri.us.

ALL WRITTEN SUBMISSION MUST BE RECEIVED NO LATER THAN March 26, 2008 AT 10:00 a.m.

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

A. Michael Marques
Director, Department of Business Regulation

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF COMMERCIAL LICENSING AND RACING & ATHLETICS
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903**

**SUMMARY OF PROPOSED NON-TECHNICAL AMENDMENTS
TO PROPOSED COMMERCIAL LICENSING REGULATION 3-
AUTOMOBILE BODY SHOP STORAGE RATES**

Notice is hereby given, in accordance with R.I. Gen. Laws § 42-35-3, that the following is a concise summary of the proposed non-technical amendments to Commercial Licensing Regulation 3, entitled *Automobile Body Shop Storage Rates* (“Proposed Regulation”). The current Commercial Licensing Regulation 3 effective on October 27, 1994 and re-filed on December 19, 2001 is referred to as “Current Regulation.”

1. Proposed Section 1 (“Authority”) and proposed Section 2 (“Purpose”) have been added to provide clarification regarding the statutory authority for the Proposed Regulation and to provide clarification to interested parties of the purpose of the Proposed Regulation.
2. Definition of “Day” was amended from the prior definition in Section 1 of the Current Regulation from “any calendar day in which the vehicle is on the property for more than twelve (12) hours” to the proposed definition in the Proposed Regulation Section 3 to “any calendar day in which the vehicle is on the premises of the automobile body repair shop.”
3. The prior definitions of “Inside Storage,” “Outside Secured Storage,” and “Outside Not Secured Storage” in the Current Regulation have been deleted because the Proposed Regulation no longer includes rates categorized by inside storage, outside secured storage, or outside not secured storage. “Storage” is defined in Section 3 of the Proposed Regulation as “ vehicles stored in a secured, lighted area surrounded by a six-foot or higher fence, with a reasonable security system.”
4. The requirement that the automobile body shop use the least expensive suitable means of storage in the Current Regulation Section 2 has been deleted because there is no longer a distinction between the different types of storage as described in number 3 above.
5. The distinction in the prior Section 1 of the Current Regulation between storage for the first seven (7) days and rates for more than seven (7) days has been deleted.
6. The Current Regulation Section 3 (Proposed Regulation Section 7) has been amended to require that an automobile body repair shop must permit an insurance representative access to inspect any vehicle for photographs and vehicle identification number checks within four (4) hours of the request.

7. Proposed Regulation Section 4 (A) is an amendment that sets storage rates based on the size of vehicle.
8. Proposed Regulation Section 4 (B) sets forth a process for the setting of storage rates.
9. Proposed Regulation Section 5 sets forth processes for the prohibition of storage charges on repaired vehicles except under certain specific circumstances and specific conditions. Proposed Regulation Section 5 (C) prohibits the imposition of storage fees on repaired vehicles if the process described in Proposed Regulation Section 5 (B) (i-iii) is not followed by the automobile body repair shop.
10. Proposed Regulation Section 6 sets forth conditions, circumstances, and processes for the imposition of storage fees for totaled or partially repaired vehicles.
11. Current Regulation Section 5 entitled “Application” has been deleted and substituted with Proposed Regulation Sections 5 and 6.
12. Proposed Regulation Section 8 sets forth a process for automobile body repair shops to submit variances from the rates set forth in Proposed Regulation Section 4.
13. Section 4 of the Current Regulation entitled “Stolen Vehicles” has been deleted and substituted with the relevant processes described in the Proposed Regulation Sections 5 and 6.
14. Proposed Regulation Section 9, entitled “Enforcement” has been added to allow for enforcement of violations of the Proposed Regulation.
15. Proposed Regulation Section 10, entitled, “Severability” has been added to protect the validity of the Proposed Regulation in the event that one of its provisions is deemed invalid.
16. Proposed Regulation Section 11, entitled, “Effective Date” has been added to clarify the effective date of the Proposed Regulation.

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

PROPOSED REGULATION
WITH TRACKED CHANGES

Commercial Licensing Regulation 3 –Automobile Body Shop Storage Rates

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Section 1 Authority

This regulation (“Regulation”) is promulgated by the Department of Business Regulation (“Department”) pursuant to the authority granted in R.I. Gen. Laws §§ 5-38-27 and 42-35-1 et seq.

Section 2 Purpose

The purpose of this Regulation is to: (i) provide definitions for terms related to the imposition of storage fees; (ii) establish reasonable maximum rates that may be charged by automobile body repair shops licensed pursuant to R.I. Gen. Laws § 5-38-1 et seq. for storage of automobiles; (iii) clarify different categories of storage fees and charges; and (iv) provide standard procedures for the notice and imposition of storage fees. This Regulation applies to all automobile body repair shops licensed by the Department. This Regulation does not apply to non-consensual tows prior to the owner of the automobile signing an authorization to repair the vehicle. This Regulation does not require an automobile body repair shop to charge nor does it prohibit an automobile body repair shop from charging less than the maximum rates established herein.

The purpose of this Regulation is also to provide insurers subject to Title 27 of the Rhode Island General Laws with information and criteria for the imposition of storage fees and charges by licensed automobile body repair shops. While insurers must comply with the Department’s Regulation 73, any issues related to storage fees and the determination of unfair claims settlement practices must be directed to the Insurance

Division of the Department for processing consistent with the statutes, regulations, and policies of the Insurance Division.

Section 3 Definitions

- A. “Day” as used herein shall mean each calendar day in which the vehicle is on the premises of the automobile body repair shop.

- B. “Storage” as used herein shall mean vehicles stored in a secured, lighted area surrounded by a six-foot or higher fence, with a reasonable security system.

Section 2 Definitions

~~“Inside Storage” shall mean containment of the vehicle in a secure building, which shall be locked when the premises are unoccupied.~~

~~“Outside Secured Storage” shall mean storage on a licensed auto body shop’s property in an area secured by a (six) 6 foot high fence, wall or other man-made barrier, lighted at night with an alarm system or similar security system.~~

~~“Outside Not Secured Storage” shall mean storage on a licensed auto body shop’s property other than in an outside secured or inside storage area.~~

~~The auto body shop shall use the least expensive suitable means of storage.~~

~~A “day is defined as any calendar day in which the vehicle is on the auto body property for more than twelve (12) hours.~~

Section 4 Section 1 Maximum Rates of Storage Vehicle Storage Charges

The maximum rate for vehicle storage charged by auto body shops shall be as follows:

Inside Storage	A	B
Vehicles less than 20 ft.	\$18.00 per day	\$30.00 per day
Vehicles 20 ft. to 31 ft.	\$22.00 per day	\$40.00 per day
Vehicles 32 ft. or more	\$25.00 per day	\$50.00 per day
Outside Secured		
Vehicles less than 20 ft.	\$15.00 per day	\$24.00 per day
Vehicles 20 ft. to 31 ft.	\$18.00 per day	\$30.00 per day
Vehicles 32 ft. or more	\$20.00 per day	\$36.00 per day
Outside Not Secured		
Vehicles less than 20 ft.	\$12.00 per day	\$20.00 per day
Vehicles 20 ft. to 31 ft.	\$15.00 per day	\$24.00 per day
Vehicles 32 ft. or more	\$18.00 per day	\$30.00 per day

~~— Rates (A) will be in effect for the first seven (7) business days and Rates (B) thereafter (other than for stolen vehicles—see Section 4). If vehicle is repaired by shop, no storage will be charged.~~

A. The maximum rates that may be charged by an automobile body repair shop for storage of a vehicle shall be as follows:

- (i) Vehicles less than 20ft. \$27.00 per day
- (ii) Vehicles 20ft. to 31 ft. \$35.00 per day
- (iii) Vehicles 32 ft or more \$43.00 per day

B. The rates indicated in Section 4(A)(i)-(iii) above shall be re-set by the Director of the Department as set forth below:

- (i) The amended fees shall be based upon supporting documentation presented by all interested parties.
- (ii) The Director may review said fee and adjust as appropriate based on the facts and evidence presented.
- (iii) Pursuant to R.I. Gen. Laws § 5-38-2(h) the adoption and publishing of said storage rates must be with the prior approval of the Director of the Department in accordance with the Administrative Procedure Act, R.I. Gen. Laws § 42-35-1 *et seq.*

~~Section 4 — Stolen Vehicles~~

~~Until the body shop actually notifies the owner or insurance carrier of its custody of a vehicle, which may be proven by use of registered mail, and for the first seven (7) business days thereafter, (A) rates will be charged.~~

Section 5 — Storage Charges Prohibited for Repaired Vehicles

A. Automobile body repair shops shall not charge storage fees for vehicles to which repairs have been completed unless the automobile body repair shop complies with Section 5(B)(i)-(iii) of this Regulation.

B. Storage fees may only be charged for a vehicle to which repairs have been completed provided that:

- (i) The owner of the vehicle has been given written notice of the completion of repairs and of the automobile body repair shop's right to charge storage fees seven (7) days after the return of the receipt of certified mail;
- (ii) Storage fees shall commence on the seventh (7th) day after the owner or household member received the written notice evidenced by return receipt from the post office;

(iii) If eight (8) days after the owner received the written notice from the automobile body repair shop, the owner fails to contact the automobile body repair shop, the automobile body repair shop must make all reasonable efforts to advise the title lien-holder(s) of the vehicle, in writing, of the status of the vehicle;

C. If an automobile body repair shop fails to fulfill its obligations under subsections 5(b)(i)-(iii) herein, it shall be prohibited from charging storage fees for the repaired vehicle.

Section 6 Storage for Totaled and Partially Repaired Vehicles

Storage fees may be charged for all totaled vehicles as described below:

A. An automobile body repair shop may charge storage fees if it has commenced repairs to a vehicle, after an appraisal completed by either an insurance company or its agent, when the vehicle is later deemed to be a total loss by the insurer.

B. In such circumstances as described in Section (A) above, storage fees shall commence two business days after the automobile body repair shop has requested a supplement in any reasonable manner required by the insurer, which supplement caused the vehicle to be deemed a total loss.

If an insurance company fails to complete the supplement within two (2) business days of proper notification by the shop, the shop may begin to charge storage fees after the two (2) business days after the supplement was initially requested.

C. Storage fees may be disallowed for the time period in which the automobile body repair shop fails to permit an insurance carrier to conduct an appraisal inspection of the vehicle within three (3) business days after the insurance company's oral or written request for such inspection.

D. An automobile body repair shop may not charge storage fees for days the shop performs any partial repairs of a vehicle.

E. Storage fees shall commence on the 7th day after the owner or household member received the written notice evidenced by return receipt from the post office.

F. If eight (8) days after the owner received the written notice from the automobile body repair shop, the owner fails to contact the automobile body repair shop, the automobile body repair shop must make all reasonable efforts to advise the title lien-holder(s) of the vehicle, in writing, of the status of the vehicle.

Section 37 Insurance Representatives

~~Insurance representatives shall be allowed to inspect any vehicles at any time for photographs and vehicle identification number checks.~~

~~Insurance representatives must be allowed, with or without appointment, to make an appraisal inspection of any vehicle as soon as practically possible, but in any event, not more than three (3) days following the insurance representative's written or oral request to inspect. Storage fees may not be charged for more than three (3) days, if a vehicle is not made available for inspection within three (3) days of a request to inspect. Storage may not be charged for any calendar day occurring between the day the insurance representative seeks access to the vehicle to make an appraisal inspection, and the day the auto body shop permits the insurance representative to enter and conduct the appraisal inspection. (viz: if the insurance representative seeks on Monday an appointment and is not permitted on the premises to make an appraisal until Wednesday, the auto body shop may not charge storage for Tuesday. If the insurance representative is unavailable before the Wednesday, then Tuesday's storage may be charged.)~~

A. Insurance representatives shall be allowed to inspect any vehicle at any time for photographs and vehicle identification number checks; an automobile body repair shop must permit such access within four (4) hours of such request.

C. Insurance representatives must be allowed with or without appointment, to make an appraisal inspection of any vehicle as soon as practically possible, but in any event, not more than three (3) days following the insurance representative's written or oral request to inspect. Storage fees may not be charged for more than three (3) days, if a vehicle is not made available for inspection within three (3) days of a request to inspect. Storage may not be charged for any day occurring between the day the insurance representative seeks access to the vehicle to make an appraisal inspection, and the day the automobile body repair shop permits the insurance representative to enter and conduct the appraisal inspection. (e.g., if the insurance representative seeks a Monday appointment and is not permitted on the premises to make an appraisal until Wednesday, the automobile body repair shop may not charge storage for Tuesday. If the insurance representative is unavailable before Wednesday, then Tuesday's storage may be charged.)

Section 5 — Application

~~Storage fees may be disallowed when the body shop has not made reasonable efforts to promptly contact the owner or insurance carrier of a stored vehicle.~~

~~These Regulations are to be followed, enforced and interpreted with a view to maximize the convenience and minimize the cost to the motorist whose car is under repair.~~

Section 8 **Variances**

- A. An automobile body repair shop or an insurer may petition this Department, in writing, for a variance from the rates indicated in Section 4 above. Upon receipt of a petition claiming undue hardship, the Director may hold a public hearing prior to rendering a decision. If a petition is approved, it shall have general prospective applicability, and shall not be deemed retroactive or applicable in any manner to claims presented prior to the approval date.

- B. The petition shall be addressed to the Director and shall explain in detail, the reason for the requested variance, and the relief sought.

- C. In the event the Director shall issue a denial of a variance, the Director shall clearly state the basis for the denial.

Section 9 **Enforcement**

Any violation of this Regulation by an automobile body repair shop shall be enforced by the Department pursuant to its authority under applicable law.

Section 10 **Severability**

If this Regulation or its application to any individual, entity, or circumstance is held to be invalid, such invalidity, shall not effect other provisions or application of this Regulation, which can be given effect without the invalid provision, and application, and to this end the provisions are declared to be severable.

Section 11 **Effective Date**

This Regulation shall become effective twenty (20) days from the date of filing with the Secretary of State's Office.

EFFECTIVE DATE: October 27, 1994
REFILED: December 19, 2001

AMENDED: INSERT DATE