



# State of New Hampshire

GENERAL COURT

CONCORD

## MEMORANDUM

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**DATE:** November 1, 2018

**TO:** Honorable Christopher Sununu, Governor  
Honorable Gene G. Chandler, Speaker of the House  
Honorable Chuck W. Morse, President of the Senate  
Honorable Paul C. Smith, House Clerk  
Honorable Tammy L. Wright, Senate Clerk  
Michael York, State Librarian

**FROM:** Representative Ken Weyler, Chairman,

**SUBJECT:** Final Report on HB 1663; Chapter 13:1, Laws of 2018

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Pursuant to HB 1663, Chapter 13:1, Laws of 2018, enclosed please find the Final Report of the Committee to Study Reimbursement Rates Under Automobile Insurance Policies.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

Enclosure

cc. committee members

# **FINAL REPORT**

## **Committee to Study Reimbursement Rates Under Automobile Insurance Policies**

**HB 1663, Chapter 13, Laws of 2018**

**November 1, 2018**

### **MEMBERS:**

Rep. Ken Weyler, Chairman  
Rep. Peter Torosian  
Rep. Kermit Williams  
Sen. Kevin Cavanaugh

### **CHARGE OF THE STUDY:**

The Committee was charged to study reimbursement rates for independent repair shops under New Hampshire automobile insurance policies.

### **ISSUE:**

Under RSA 417:4, automobile insurance companies in New Hampshire are expressly permitted to recommend that a customer have repairs done at a direct repair facility with which the insurer has an established relationship. Such a referral is permitted only if the insurer informs the vehicle owner that repair facility of the customer's choice may be hired to do the work, but payment by the insurer may be limited to the "fair and reasonable" price in the area. This rate is often the labor rate negotiated between the insurer and a direct repair facility.

### **PROCESS AND PROCEDURES:**

Committee members heard extensive testimony from many of the following meeting participants and would like to thank all of them for their participation in this study.

Rep. Dennis Green, sponsor of HB 1663

James Fox, NH Insurance Department  
Keith Nyhan, NH Insurance Department  
Emily Doherty, Esq., NH Insurance Department

Lori Nadeau, Birch Street Collision, Derry

Mike Berounsky, Ben's Auto Body, Portsmouth  
 Steve Piispanen, Keene Auto Body, Keene  
 David Ludwig, Prestige Auto Body, Manchester  
 Shaun Hawkins, Prestige Auto Body, Manchester  
 Crystal Demers  
 Andrew Hosmer, B/S Auto Body

Daniel W. Bennett, New Hampshire Automobile Dealers Association  
 Marc Brown, Advantage NH  
 Wayne Weikel, Alliance of Automobile Manufactures

Scot Zajic, Safelite Group, Inc.  
 Erik Taylor, Gallagher, Callahan and Gartrell/Safelite

Lindsay Nadeau, Orr and Reno; NH Association of Domestic Insurance Companies  
 Jim Hatem, State Farm Insurance  
 Michael McLaughlin, Property Casualty Insurance Association of America  
 Bob Dunn, Devine Millimet & Branch

### ***Material Reviewed***

1. NH Laws and administrative rules:
  - RSA 407-D – After Market Parts
  - RSA 417:4, XX - Coercion in Requiring Certain Automobile or Glass Repair
  - Ins 1002 Claim Settlement for Property and Casualty Insurance;
  - Ins 1002.17 – Willing and Able Repair Facilities; Motor Vehicle Insurance
2. Laws adopted in Rhode Island and California establishing procedures for conducting a labor rate survey to determine a prevailing labor rate for motor vehicle repairs in a certain geographic area.
3. Information submitted by auto repair shop representatives showing specific examples of repair disputes and communications with insurance carriers
4. Laws on Aftermarket Automobile Parts, compiled by the National Association of Insurance Commissioners, 2017
5. NH laws outlining the requirements for motor vehicle policy forms
6. Sample personal automobile insurance policies from ISO, Nationwide and The Hartford Insurance Company
7. Data submitted by the Insurance Department relative to the Division of Consumer Services; staffing levels, complaints filed

### ***Labor Reimbursement Rate***

Independent repair shop owners report that this law has led to the following:

1. Insurers often reimburse only at a direct repair facility's labor rate which independent shops claim is artificially low. Independent repair shop owners are unable to negotiate for what they consider to be a fair labor rate, especially for mechanical work. Shop owners are forced to either refuse the work or agree to work at a loss.
2. After failing to agree to an acceptable labor rate for mechanical work, the insurer will hire the shop to perform body work and then pay to have the vehicle stored at the facility and towed to a dealer for the mechanical work; this ultimately costs the insurer more than having all of the work performed at the independent shop.

### ***After Market Parts***

In addition, under RSA 407-D, which was adopted in 1988, insurers are prohibited from requiring the use of after market parts in a repair unless the part is "at least equal in like kind and quality to the original part in terms of fit, quality and performance." This law defines 'after market part' as "sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels." This definition does not include vehicle glass.

Independent repair shop owners are frustrated by their sense that insurance companies dictate how, and with which parts, a vehicle is to be repaired. They report that after market parts are not always of like kind and quality. For example, they may not fit in the vehicle without being forced or the bolt holes may not line up with holes in the vehicle frame. Any alteration to the part to make it fit compromises the integrity of the part.

Repair shop owners described the following situations:

3. At times insurers require the use of inferior after market parts for a covered repair. This compromises the safety of the vehicle and can be a contributing factor in a second accident, leading to further damages, potential physical harm to people and necessitating further repairs at more expense.
4. In some cases, when a repair shop contests an Insurance Department ruling on whether an after market part meets the "like kind and quality" standard, there are claims that department officials are unqualified to judge appropriate repair procedures and parts.

### ***Insurance Department Complaint Process***

The committee also heard testimony on the complaint process available to consumers and auto body shop representatives. The Consumer Services Division of the Insurance Department attempts to mediate disputes between insurance consumers and licensed insurance carriers,

including property and casualty carriers. Auto repair shop representatives have had the ability to file complaints for approximately the last two years.

The Division provided data on complaints received relative to motor vehicle insurance over the past 21 months. They reported that there were a total of 65 complaints filed by repair shops – with 56 of these complaints filed by a single shop. During this same period 8 complaints were filed by consumers. The timeframe used for the investigation of these complaints averaged 22 days.

### ***Insurance Carrier perspective***

Insurance carrier representatives stressed that the current motor vehicle insurance market is competitive in New Hampshire and cautioned against adopting legislation that would place upward pressure on premiums.

### ***Proposals for Future Legislation***

The following proposals for legislation were presented and discussed during the course of the committee's work. Legislation to address at least some of these issues will be filed in the 2019 legislative session.

#### **1. Definition of Fair and Reasonable**

Amend the definition of “fair and reasonable” in RSA 417:4, XX(c)

- a. to clarify that it does not mean “lowest rate”; or
- b. by adding: “If an independent repair shop or facility and an insurer are unable to agree on a price, then for the purposes of this section, “fair and reasonable price” shall mean the average price available from at least three but no more than five recognized, competent and conveniently located, independent repair shops or facilities which do not have a contractual relationship with any insurer and which are able to repair the damaged automobile within a reasonable time.”

#### **2. Mechanical Repair Rates**

Amend RSA 417:4, XX(c) by adding the following to the end of the paragraph:

“Every insurance carrier offering insurance in the state of New Hampshire shall reimburse New Hampshire businesses capable of conducting mechanical repairs covered by such insurance in the amount equal to that which is normally and reasonably charged by the mechanical repairer for like service and repairs rendered to retail consumers who are not using insurance coverage for such repair. Mechanical repairs shall be defined by industry utilized repair estimate database providers.”

3. After Market Parts  
Amend RSA 407-D

- a. Prohibit insurers from requiring any repair procedure that is contrary to original equipment manufacturer (OEM) procedures.
- b. Require the use of original equipment manufacturer (OEM) parts for the term of a warranty on an insured vehicle.

4. Paint and Material Reimbursement

Require all nationally recognized paint and materials calculators to be accepted and, if used, to be reimbursed accordingly

Submitted on behalf of the committee,

Rep. Ken Weyler, Chairman