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Senate of Pennsylvania

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Original: 2001
Harbison
cc:

Tyrrell
Wilmarth
McGinley
Sandusky
Legal
Notabook

May 19, 1999

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17108

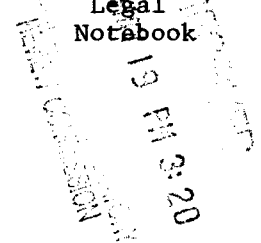
RE: Proposed Regulation No. 11-149, Chapter 62, Title 31

Dear Mr. Nyce:

Please accept this correspondence in connection with the above-referenced proposed regulations, which I believe to be inconsistent with the Motor Vehicle Physical Damage Appraisers Act and the Unfair Insurance Trade Practices Act and regulations thereto.

First, the proposed regulations would infringe with a consumer's ability to select the auto body shop of his/her choice by permitting appraisers to list the names of two repair shops on the appraisal. This would permit consumers to be unknowingly steered into direct repair programs operated by insurers, which would be in violation of the Appraisers Act, which states that "[N]o appraiser or his employee shall require that repairs be made in any specific repair shop." 63 P.S. §861(d). Therefore, I believe that this change in the proposed regulation should be disapproved.

Second, the proposed regulation seeks to permit appraisers to prepare an estimate of damage using imitation parts. It is my understanding that neither the Appraisers Act nor existing regulations address or authorize the use of imitation parts. In fact, it appears that the appraisers Act and existing regulations provide that an appraiser must prepare an appraisal specifying the use of used parts only upon consideration of the "operational safety of the vehicle", and, such parts must be equivalent to or better than the condition of the damaged parts they are replacing. 63 P.S. §861(b) and 31 Pa. Code §62.3(c). Sufficient crash test data is not available for imitation parts; therefore, an appraiser cannot certify that these parts are equivalent to or better than the damaged parts.



Mr. Nyce
May 19, 1999
Page 2

In addition, another problem becomes apparent if a vehicle is still covered by a manufacturer's warranty. Even if any non-OEM part must come with a warranty, a consumer should not be forced to void a manufacturer's warranty with the use of sub-standard imitation parts. Again, because there is insufficient crash test available for imitation parts, unless and until non-OEM parts are tested and approved by the manufacturer, the use of such parts should not be authorized.

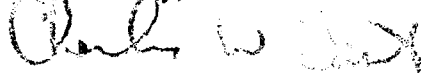
Third, Insurer's require shops participating in their direct repair programs to have appraisers on staff who will prepare appraisals consistent with the directives, criteria, rates and procedures set by the insurers. This presents a conflict of interest, as the Appraisers Act specifically states that appraisers must write an independent appraisal, and should not favor any party.

Finally, it has been brought to my attention that there needs to be some clarification in the definition of "appraisal" in the regulations. The Appraisers Act requires that an appraisal contain "an itemized listing of all damages" necessary to repair a damaged vehicle. 62 P.S. §861(b). The Regulation provides that an appraisal must contain "all items necessary" to repair a vehicle. 31 Pa.Code §62.3(b)(1). Since these definitions are inconsistent, it is unclear what is required to be in the appraisal. Therefore, the definition from the Appraisers Act should be included in the regulation to achieve consistency.

I believe that the above-mentioned concerns need to be addressed before the proposed regulations should be approved, in order to protect the consumers of the Commonwealth. If you need any further information on these comments, please feel free to contact me.

With best wishes,

Sincerely,



CHARLES W. DENT
Senator, 16th District
Commonwealth of PA

CWD/lws