

PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 1679

AMENDED IN ASSEMBLY APRIL 6, 2017

AMENDED IN ASSEMBLY MARCH 23, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1679

Introduced by Assembly Member Burke
(Coauthors: Assembly Members Bigelow, Chen, Daly, Mayes,
Obernolte, and Voepel)

February 17, 2017

Amendment 1

An act to amend ~~Sections~~ *Section 758* and ~~758.5~~ of, and to add
Section 758.1 to, the Insurance Code, relating to insurance.

Amendments 2 & 3

LEGISLATIVE COUNSEL'S DIGEST

AB 1679, as amended, Burke. Motor vehicle insurance: auto body repair.

Existing law makes certain business practices in insurance unlawful, including, but not limited to, an insurer requiring an auto body repair shop, as a condition of participation in the insurer's direct repair program, to pay for the cost of an insured's rental vehicle that is replacing an insured vehicle damaged in an accident, or to pay for the towing charges of the insured with respect to that accident. Existing law also requires any insurer that conducts an auto body repair labor rate survey to determine and set a specified prevailing auto body repair labor rate in a specific geographic area to report the results of that survey to the Department of Insurance, which is required to make the information available upon request.

This bill would delete the above-described provisions regarding an auto body repair labor rate survey and instead would require an insurer

that conducts or uses a survey that establishes a prevailing auto body repair labor rate in a specific geographic area to report the results of the survey to the department at least every ~~24~~ 12 months and would require the survey results to contain specified information, including, among other things, the name and physical address of each auto body repair shop surveyed, the total number of auto body repair shops surveyed, and a description of the geographic area covered. The bill would authorize the department to have access to all labor rate survey responses, a list of surveyed auto repair shops, the method for selecting surveyed shops, and the information used by the insurer to determine the geographic area for the survey and would require the department to keep all that information confidential, as specified. The bill would provide that a survey that complies with specified standards and requirements be accorded the status of a rebuttable presumption by the commissioner that the insurer has attempted in good faith to effectuate a fair and equitable labor rate component of a claim settlement or an adjustment of the labor rate component of a written estimate provided by a claimant. *an auto body repair shop participating in the survey to declare specified information, including, among other things, that it meets specified equipment requirements and has proof of insurance, as specified. The bill would require an auto body repair labor rate survey to meet specified standards, including surveying a minimum of 30 auto body repair shops or 30% of auto body repair shops, whichever is greater, in a geographical area, as defined. The bill would require the survey to ask specified questions, including what is the regular hourly rate an auto body repair shop charges for repair work, as specified. The bill would permit an insurer or auto body repair shop to negotiate a labor rate that is higher or lower than the prevailing auto body repair labor rate, and permit an insurer to adjust the labor rate in a written estimate provided by a claimant's chosen repair shop if specified criteria are met.*

Existing law prohibits insurers from requiring that an automobile be repaired at a specific automotive repair dealer, as defined. Under existing law, an insurer may suggest or recommend a specific automotive repair dealer under specified circumstances, including when a referral is expressly requested by the claimant. Existing law authorizes an insurer to provide a claimant with specific truthful and nondeceptive information regarding the services and benefits available to the claimant during the claims process.

~~This bill would authorize an insurer to provide the claimant, at any time, with specific, truthful, and nondeceptive information including, among other things, a description of the insurer's direct repair program and information identifying available participating direct repair program repair shops and information about the types of parts that may be used in making the necessary repairs to the damaged motor vehicle.~~

~~Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.~~

~~This bill would make legislative findings to that effect.~~

~~This bill would also clarify its intent to supplement, and not to supersede, Department of Insurance regulations regarding methods for an insurer to conduct an auto body repair labor rate survey.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 SECTION 1. ~~The Legislature finds and declares all of the~~
2 ~~following:~~
3 ~~(a) It is the intent of the Legislature in enacting the amendments~~
4 ~~to Section 758.5 of the Insurance Code in Assembly Bill 1679 of the~~
5 ~~2017-18 Regular Session to supersede, in their entirety, the~~
6 ~~amendments to subdivision (c) of Section 2695.8 of Title 10 of~~
7 ~~the California Code of Regulations adopted on November 9, 2016,~~
8 ~~and to supersede any provision of that regulation in effect prior to~~
9 ~~November 9, 2016, that is in conflict with Section 758.5 of the~~
10 ~~Insurance Code.~~
11 ~~(b) It is the further intent of the Legislature that the amendments~~
12 ~~to Section 758.5 enacted pursuant to Assembly Bill 1679 of the~~
13 ~~2017-18 Regular Session are intended to occupy the field with~~
14 ~~respect to the rules governing insurer communications with~~
15 ~~claimants concerning the repair of motor vehicles.~~
16 ~~(c) That, because of the relative infrequency that consumers~~
17 ~~need vehicle repair services, both first-party and third-party~~
18 ~~claimants often do not know about the full range of options~~
19 ~~available for the repair of their motor vehicles and benefit from~~

Amendment 4

age 3 20 ~~auto repair process information provided by insurers during the~~
21 ~~claims adjusting process.~~

+ *SECTION 1. The Legislature finds and declares that it is the*
+ *intent of this act to provide another method for an insurer to*
+ *conduct an auto body repair labor rate survey in addition to*
+ *methods permitted under regulations promulgated by the*
+ *Department of Insurance. The intent of this act is not to supersede*
+ *those regulations.*

age 4 22 SEC. 2. Section 758 of the Insurance Code is amended to read:

1 758. (a) It is unlawful for an insurer to require an auto body
2 repair shop registered pursuant to Sections 9884 and 9889.52 of
3 the Business and Professions Code, as a condition of participation
4 in the insurer's direct repair program, to pay for the cost of an
5 insured's rental vehicle that is replacing an insured vehicle
6 damaged in an accident, or to pay for the towing charges of the
7 insured with respect to that accident. However, the insurer and the
8 auto body repair shop may agree in writing to terms and conditions
9 under which the rental vehicle charges become the responsibility
10 of the auto body repair shop when the shop fails to complete work
11 within the agreed-upon time for repair of the damaged vehicle.

12 (b) A registered auto body repair shop that is denied participation
13 in an insurer's direct repair program may report a denial to the
14 department, which shall maintain a record of all those denials for
15 the purposes of gathering market conduct information. An insurer,
16 upon the request of the department, shall disclose the fact that a
17 denial was made.

25 ~~SEC. 3. Section 758.1 is added to the Insurance Code, to read:~~

26 ~~758.1. (a) This section or any other law shall not be construed~~
27 ~~to require any insurer to conduct or use a prevailing auto body~~
28 ~~repair labor rate survey.~~

29 ~~(b) An insurer that conducts or uses a survey that establishes a~~
30 ~~prevailing auto body repair labor rate in a specific geographic area~~
31 ~~shall report the results of the survey to the department at least every~~
32 ~~24 months for as long as the insurer continues to use that prevailing~~
33 ~~auto body repair labor rate survey. The survey results reported to~~
34 ~~the department shall include all of the following information, which~~
35 ~~the department shall make available upon request:~~

37 ~~(1) The name and physical address of each auto body repair~~
38 ~~shop surveyed.~~

39 ~~(2) The total number of auto body repair shops surveyed.~~

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page 5 1 ~~(3) The prevailing auto body repair labor rate established for~~
2 ~~each geographic area surveyed.~~
3 ~~(4) A description of the specific geographic area covered by the~~
4 ~~prevailing auto body repair labor rate reported.~~
5 ~~(5) A general description of the method used to calculate or~~
6 ~~determine the specific prevailing auto body repair labor rate~~
7 ~~reported for each specific geographic area.~~
8 ~~(c) (1) Upon request, the department shall have access to all~~
9 ~~survey responses, a list of surveyed auto body repair shops, the~~
10 ~~method for selecting those shops, and information used by the~~
11 ~~insurer to determine the geographic area for the prevailing auto~~
12 ~~body repair labor rate survey.~~
13 ~~(2) Excluding the information required to be reported to the~~
14 ~~department in subdivision (b), this information shall be held~~
15 ~~confidential by the department and treated as a trade secret and~~
16 ~~shall not be produced or otherwise disclosed, except when the~~
17 ~~department is required to produce the data or information by a~~
18 ~~valid subpoena, court order, or other applicable law.~~
19 ~~(3) If the department determines that it is required to produce~~
20 ~~the data or information pursuant to this subdivision, the department~~
21 ~~shall first advise the insurer and any other source of the data in~~
22 ~~order to give the insurer or other source an opportunity to protect~~
23 ~~the proprietary and confidential nature of the data.~~
24 ~~(d) Notwithstanding any other law or regulation, a prevailing~~
25 ~~auto body repair labor rate survey that complies with all of the~~
26 ~~following standards and requirements shall be accorded the same~~
27 ~~status as a survey that complies with all of the standards and~~
28 ~~requirements set forth in subdivision (d) of Section 2695.81 of~~
29 ~~Title 10 of the California Code of Regulations for purposes of~~
30 ~~satisfying the requirements of subdivision (c) of Section 2695.81~~
31 ~~of Title 10 of the California Code of Regulations:~~
32 ~~(1) The survey does not use labor rate information older than~~
33 ~~24 months except for a survey that is continuously available for~~
34 ~~updating by auto body repair shops or if the labor rate information~~
35 ~~has been adjusted for inflation, deflation, or cost of living by a~~
36 ~~statistically valid method within the last 24 months.~~
37 ~~(2) (A) The sample size is equal to or greater than 20 percent~~
38 ~~of the total auto body repair shops registered with, or licensed by,~~
39 ~~the Bureau of Automotive Repair as an auto body shop or paint~~

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1 shop, surveyed at random subject to paragraph (3), for each
2 geographic region.
3 (B) This paragraph shall not be construed to require an insurer
4 to verify the registration or license status of surveyed auto body
5 repair shops with the Bureau of Automotive Repair.
6 (3) The survey may exclude shops that do not meet the specific
7 standards of subparagraph (A) of paragraph (4) of subdivision (d)
8 of Section 2695.81 of Title 10 of the California Code of
9 Regulations, but does not exclude consideration of any auto body
10 repair shop on the basis of the shop's labor rate or on the basis of
11 its participation or nonparticipation in the direct repair program
12 of the surveying insurer or any other insurer.
13 (4) The survey's methodology does not require an auto body
14 repair shop to respond to the survey in any of the following
15 manners:
16 (A) Electronic format.
17 (B) Less than 30 calendar days after the survey questionnaire
18 was mailed or electronically transmitted to the shop.
19 (C) By providing its discounted rate for the direct repair program
20 of the surveying insurer or any other insurer.
21 (5) The survey calculates the prevailing auto body repair labor
22 rate as the median rate charged by the surveyed auto body repair
23 shops in a specific geographic area, without any weighting other
24 than weighting based on repair volume capacity.
25 (6) The survey data is compiled from one or more of the
26 following sources:
27 (A) Direct responses provided by an auto body repair shop.
28 (B) Any paid repair invoices, including those paid by the insurer
29 or another insurer.
30 (C) Third-party automobile collision repair estimating software
31 used by the insurer to prepare estimates.
32 (7) The survey uses any reasonable, contiguous geographic area
33 to establish a prevailing auto body repair labor rate, including
34 cities, counties, and Core Based Statistical Areas as defined by the
35 federal Office of Management and Budget for use by federal
36 statistical agencies, as long as the geographic area chosen has at
37 least six auto body repair shops whose labor rate information is
38 included in the survey.
39 (e) This section shall not be construed to require an insurer to
40 include in the calculation of the prevailing auto body repair labor

1 rate any survey responses that exceed the posted labor rate for the
2 work performed. An insurer may request additional information
3 to substantiate responses received from the survey.
4 (f) This section shall not be construed to prohibit an insurer
5 from paying a labor rate lower than the prevailing auto body repair
6 labor rate if the auto body repair shop chosen by the claimant to
7 perform the repairs charges a labor rate lower than the prevailing
8 auto body repair labor rate.
9 (g) This section shall not preclude an insurer or an auto body
10 repair shop from negotiating a labor rate that is higher or lower
11 than the prevailing auto body repair labor rate established by the
12 auto body repair labor rate survey.
13 SEC. 4. Section 758.5 of the Insurance Code is amended to
14 read:
15 758.5. (a) An insurer shall not require that an automobile be
16 repaired at a specific automotive repair dealer, as defined in Section
17 9880.1 of the Business and Professions Code.
18 (b) (1) An insurer shall not suggest or recommend that an
19 automobile be repaired at a specific automotive repair dealer unless
20 either of the following applies:
21 (A) A referral is expressly requested by the claimant.
22 (B) The claimant has been informed in writing of the right to
23 select the automotive repair dealer.
24 (2) Notwithstanding paragraph (1), an insurer may provide the
25 claimant, at any time, with specific, truthful, and nondeceptive
26 information, including, but not limited to, any of the following:
27 (A) A description of the insurer's direct repair program and
28 information identifying available participating direct repair program
29 repair shops.
30 (B) Information about the expected timeframes necessary to
31 complete the repairs of the damaged motor vehicle at the repair
32 shop selected by the claimant.
33 (C) Information about the differences in the claim adjustment
34 and vehicle repair process between repair shops that participate in
35 the insurer's direct repair program and those repair shops that do
36 not participate.
37 (D) Information about equipment or technical capabilities that
38 a repair shop may need in order to accomplish the necessary repairs
39 on the damaged motor vehicle.

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8 (E) Information about the types of parts that may be used in
9 making the necessary repairs to the damaged motor vehicle.
10 (F) Information about parts or workmanship warranties and the
11 quality of workmanship that may be available from different repair
12 shops.
13 (3) If an insurer's recommendation of an automotive repair
14 dealer is accepted by the claimant, the insurer shall cause the
15 damaged vehicle to be restored to its condition prior to the loss at
16 no additional cost to the claimant other than as stated in the policy
17 or as is otherwise allowed by law. If the recommendation of an
18 automotive repair dealer is done orally, and if the oral
19 recommendation is accepted by the claimant, the insurer shall
20 provide the information contained in this paragraph, as noted in
21 the statement below, to the claimant at the time the
22 recommendation is made. The insurer shall mail or provide the
23 notice required by this paragraph within five calendar days from
24 the acceptance of the recommendation. The written notice required
25 by this paragraph shall include the following statement plainly
26 printed in no less than 10-point type in a separate and freestanding
27 document:
28 "WE ARE PROHIBITED BY LAW FROM REQUIRING THAT
29 REPAIRS BE DONE AT A SPECIFIC AUTOMOTIVE REPAIR
30 DEALER. YOU ARE ENTITLED TO SELECT THE AUTO
31 BODY REPAIR SHOP TO REPAIR DAMAGE COVERED BY
32 US. WE HAVE RECOMMENDED AN AUTOMOTIVE REPAIR
33 DEALER THAT WILL REPAIR YOUR DAMAGED VEHICLE.
34 WE RECOMMEND YOU CONTACT ANY OTHER
35 AUTOMOTIVE REPAIR DEALER YOU ARE CONSIDERING
36 TO CLARIFY ANY QUESTIONS YOU MAY HAVE
37 REGARDING SERVICES AND BENEFITS. IF YOU AGREE
38 TO USE OUR RECOMMENDED AUTOMOTIVE REPAIR
39 DEALER, WE WILL CAUSE THE DAMAGED VEHICLE TO
40 BE RESTORED TO ITS CONDITION PRIOR TO THE LOSS
1 AT NO ADDITIONAL COST TO YOU OTHER THAN AS
2 STATED IN THE INSURANCE POLICY OR AS OTHERWISE
3 ALLOWED BY LAW. IF YOU EXPERIENCE A PROBLEM
4 WITH THE REPAIR OF YOUR VEHICLE, PLEASE CONTACT
5 US IMMEDIATELY FOR ASSISTANCE."
6 (e) Except as provided in paragraph (1) of subdivision (b), or
7 as to information of the kind authorized by paragraph (2) of

8 subdivision (b), after the claimant has chosen an automotive repair
 9 dealer, the insurer shall not suggest or recommend that the claimant
 10 select a different automotive repair dealer.
 12 ~~(d) Any insurer that, by the insurance contract, suggests or~~
 13 ~~recommends that an automobile be repaired at a particular~~
 14 ~~automotive repair dealer shall also do both of the following:~~
 15 ~~(1) Prominently disclose the contractual provision in writing to~~
 16 ~~the insured at the time the insurance is applied for and at the time~~
 17 ~~the claim is acknowledged by the insurer.~~
 18 ~~(2) If the claimant elects to have the vehicle repaired at the shop~~
 19 ~~of his or her choice, the insurer shall not limit or discount the~~
 20 ~~reasonable repair costs based on charges that would have been~~
 21 ~~incurred had the vehicle been repaired by the insurer's chosen~~
 22 ~~shop.~~
 23 ~~(e) For purposes of this section, "claimant" means a first-party~~
 24 ~~claimant or insured, or a third-party claimant who asserts a right~~
 25 ~~of recovery for automotive repairs under an insurance policy.~~
 26 ~~(f) The powers of the commissioner to enforce this section shall~~
 27 ~~include those granted in Article 6.5 (commencing with Section~~
 28 ~~790) of Chapter 1 of Part 2 of Division 1.~~
 32 ~~SEC. 5. The Legislature finds and declares that Section 3 of~~
 33 ~~this act, which adds Section 758.1 to the Insurance Code, imposes~~
 34 ~~a limitation on the public's right of access to the meetings of public~~
 35 ~~bodies or the writings of public officials and agencies within the~~
 36 ~~meaning of Section 3 of Article I of the California Constitution.~~
 37 ~~Pursuant to that constitutional provision, the Legislature makes~~
 38 ~~the following findings to demonstrate the interest protected by this~~
 39 ~~limitation and the need for protecting that interest:~~
 1 ~~In order to protect insurer proprietary information, it is necessary~~
 2 ~~to enact legislation that limits the public's right of access to~~
 3 ~~proprietary information that may be collected in connection with~~
 4 ~~insurance auto body repair labor rate surveys reported pursuant to~~
 5 ~~Section 758.1 of the Insurance Code.~~
 + *SEC. 3. Section 758.1 is added to the Insurance Code, to read:*
 + *758.1. (a) This section or any other law shall not be construed*
 + *to require an insurer to conduct or use an auto body repair labor*
 + *rate survey. An insurer that conducts an auto body repair labor*
 + *rate survey to determine and set a specified prevailing auto body*
 + *repair labor rate in a specific geographic area shall report the*
 + *results of that survey to the department, which shall make the*

+ information available upon request. Nothing in this section
 + precludes an insurer from determining the prevailing auto body
 + repair labor rate using other methods that reasonably consider
 + market conditions in a specific geographic area.

+ (b) An insurer that conducts or uses an auto body repair labor
 + rate survey that establishes a prevailing auto body repair labor
 + rate in a specific geographic area shall report the results of that
 + survey to the department at least every 12 months for as long as
 + the insurer continues to use that survey. An insurer may use the
 + auto body repair labor rate survey results for an additional 12
 + months if the labor rate information has been adjusted using the
 + Consumer Price Index for All Urban Consumers for California
 + calculated by the Department of Finance for the same period. A
 + prevailing auto body repair labor rate shall be calculated as the
 + labor rate at or which a simple majority of the surveyed auto body
 + repair shops charge in a specific geographic area, as defined in
 + subdivision (d). Only survey responses from auto body repair shops
 + that meet the standards in subdivision (c) shall be included for the
 + purposes of calculating the prevailing auto body repair labor rate.

+ (c) An auto body repair shop that participates in an auto body
 + repair labor rate survey shall declare in its response to the survey
 + whether it meets the following standards:

+ (1) Meets equipment requirements for auto body repair shops,
 + as required by the Bureau of Automotive Repair and as described
 + in Section 3351.5 of Title 16 of the California Code of Regulations,
 + including any amendments.

+ (2) Has proof of garage keepers liability and workers'
 + compensation insurance or its equivalent.

+ (3) Has electrical or hydraulic equipment capable of making
 + multiple simultaneous body or structural pulls.

+ (4) Has a spray booth that meets current federal, state, and
 + local requirements.

+ (5) Has the ability to complete and verify four-wheel alignment
 + through a computer printout using either of the following:

+ (A) An in-house alignment system with at least one technician
 + who is certified or qualified.

+ (B) A qualified sublet provider.

+ (6) Has the ability to do either of the following:

+ (A) Remove and reinstall frame, suspension, engine, and
 + drivetrain components.

- + (B) Use a qualified sublet provider to remove and reinstall
- + frame, suspension, engine, and drivetrain components.
- + (7) Has the ability to evacuate, reclaim, and recharge a vehicle
- + air conditioning system using either of the following:
- + (A) EPA-compliant in-house equipment and certified
- + technicians.
- + (B) A qualified sublet provider.
- + (8) Subscribes to a provider of structural specifications with
- + periodic updates covering the vehicle structure for the make,
- + model, and year of the vehicle or vehicles being repaired and wheel
- + alignment specifications for the vehicle structure for the make,
- + model, and year of the vehicle or vehicles being repaired.
- + (d) An auto body repair labor rate survey may cover any of the
- + following geographic areas:
- + (1) An Assembly district established by the Citizens Redistricting
- + Commission pursuant to Section 2 of Article XXI of the California
- + Constitution.
- + (2) A geographic area, as defined in paragraph (8) of
- + subdivision (d) of Section 2695.81 of Title 10 of the California
- + Code of Regulations.
- + (3) Contiguous ZIP Codes within the boundaries of local
- + workforce development areas established by the Employment
- + Development Department that include a minimum of 30 auto body
- + repair shops.
- + (e) An auto body repair labor rate survey shall survey at random
- + a minimum of 30 auto body repair shops or 30 percent of shops,
- + whichever is greater, in a geographic area, as defined in
- + subdivision (d). If a geographic area does not include 30 auto
- + body repair shops, then all auto body repair shops in the
- + geographic area shall be surveyed. This subdivision shall not
- + preclude the commissioner, using existing authorities, from
- + ensuring the methodology used by an insurer in an auto body
- + repair labor rate survey achieves randomness in the selection of
- + shops surveyed. Surveys shall not be sent to auto body repair shops
- + that are not registered with or licensed by the Bureau of
- + Automotive Repair.
- + (f) (1) An auto body repair labor rate survey shall ask the
- + questions and subquestions set forth in paragraph (2). The auto
- + body repair labor rate survey questions shall be the only
- + information used to determine the prevailing labor rate in a

+ geographic area, as defined in subdivision (d). The survey shall
+ not use a labor rate that includes a discounted rate negotiated or
+ contracted for under a direct repair program, as defined in Section
+ 2698.90 of Title 10 of the California Code of Regulations.

+ (2) An auto body repair labor rate survey shall include, but is
+ not limited to, the following questions and subquestions printed
+ in no less than 10-point type:

+ “Is your shop duly registered or licensed as an auto body shop,
+ paint shop, or both with or by the Bureau of Automotive Repair,
+ and does your shop meet the standards in Insurance Code Section
+ 758.1(c)(1) to (8), inclusive?

+ YES _____

+ NO _____

+ If you answered YES to this question, please provide your license
+ number with the California Bureau of Automotive Repair.

+ If you answered NO to this question, stop here and return the
+ survey questionnaire to us.

+ What is your regular hourly rate charged for repair work,
+ excluding discounted direct repair work, for the following?

+ (1) Auto Body/Sheet Metal Labor Rate: _____ per hour.

+ (2) Structural Labor Rate: _____ per hour.

+ (3) Frame Labor Rate: _____ per hour.

+ (4) Mechanical Labor Rate: _____ per hour.

+ (5) Refinish Labor Rate: _____ per hour.”

+ (3) An auto body repair labor rate survey may add subquestions
+ about different types of repair work to the question in paragraph
+ (2) if the subquestions are in the same format set forth in paragraph
+ (2).

+ (4) An auto body repair labor rate survey may add additional
+ questions if they are in the same format set forth in paragraph (2).

+ (g) Specialty repair rates shall be handled on an individual
+ basis.

+ (h) This section shall not be construed to require an insurer to
+ include in the calculation of the prevailing auto body repair labor
+ rate a survey response that exceeds the posted labor rate for the
+ work performed. An insurer may request additional information
+ to substantiate responses received from the survey.

+ (i) This section shall not be construed to prohibit an insurer
+ from paying a labor rate lower than the prevailing auto body
+ repair labor rate if the auto body repair shop chosen by the
+ claimant to perform the repairs charges a labor rate lower than
+ the prevailing auto body repair labor rate.

+ (j) This section shall not preclude an insurer or an auto body
+ repair shop from negotiating a labor rate that is higher or lower
+ than the prevailing auto body repair labor rate established by the
+ auto body repair labor rate survey. The prevailing auto body repair
+ labor rate shall not be presumed to be a maximum or minimum
+ that shall be paid to settle a specific claim.

+ (k) Insurers are not required to maintain an open, rolling survey
+ process. If an insurer maintains an open, rolling survey process
+ on its Internet Web site that auto body repair shops may complete
+ at any time, the insurer shall annually send a participation
+ reminder to, and verify the accuracy of survey information with,
+ an auto body repair shop that has not completed the survey within
+ the last 12 months. Information that has not been updated by an
+ auto body repair shop within 12 months of the previous survey
+ shall not be used to calculate the prevailing auto body repair labor
+ rate.

+ (l) (1) An insurer may use an auto body repair labor rate survey
+ as a basis to reasonably adjust the labor rate in a written estimate
+ provided by a claimant's chosen auto body repair shop if the
+ insurer can demonstrate the labor rate charged or quoted by the
+ repair shop for a specific type of labor on a particular claim is
+ higher than the labor rate charged by that auto body repair shop
+ for that type of labor during the 120 calendar days immediately
+ preceding the day that labor rate was quoted or charged by that
+ auto body repair shop on the claim in question. The insurer may
+ then adjust the labor rate in the estimate to the lower of:

+ (A) The labor rate charged by the auto body repair shop for
+ repairs completed by that auto body repair shop during the
+ immediately preceding 120 calendar days.

+ (B) The prevailing auto body repair labor rate as determined
+ by the survey.

+ (2) To apply the provisions of this subdivision, the insurer must
+ have on file at least three repair invoices issued by the auto body
+ repair shop that show the labor rate charged for repairs completed
+ during the immediately preceding 120 calendar days. If not all of

- + *the repair invoices the insurer relies on show the same lower rate*
- + *was charged, the insurer shall only adjust the labor rate on the*
- + *claim in question to the highest of the rates indicated among the*
- + *invoices or other documents the insurer is relying on to adjust the*
- + *labor rate pursuant to this subdivision.*
- + *(3) For the purposes of this subdivision, only repair invoices*
- + *that show labor rates charged in connection with a nondirect*
- + *repair program or other nondiscounted auto body repair work*
- + *may be used.*

O