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STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21st Floor  
San Francisco, California 94105

File No. RH05044654

Date: July 12, 2005

## INITIAL STATEMENT OF REASONS

### PROPOSED AMENDMENTS TO THE AUTO BODY REPAIR LABOR RATE SURVEYS REGULATIONS

#### **INTRODUCTION:**

California Insurance Commissioner John Garamendi ("Commissioner") will consider the amendment of Title 10, California Code of Regulations, Chapter 5, Subchapter 9, Article 7, Section 2698.91, entitled "Auto Body Repair Labor Rate Surveys". The original regulations became effective October 25, 2002. After working with the regulations, it has become apparent that additional clarification is necessary for the proper interpretation and implementation of the statute.

The purpose of the proposed amendment is to further interpret, clarify, and make specific the provisions of California Insurance Code ("Ins. Code") section 758(c).

#### **DESCRIPTION OF THE PUBLIC PROBLEM ADDRESSED BY EACH SUBDIVISION / THE SPECIFIC PURPOSE AND NECESSITY OF EACH SUBDIVISION**

Auto insurance fraud and theft in California costs upwards of \$9 billion annually. The Legislative Branch determined that more was needed to be done to curtail these fraudulent activities.

Ins. Code section 758 (c) provides that if an insurer conducts an auto body repair labor rate survey to determine and set a specified prevailing rate in a specific geographic area, the insurers must report the results of the survey to the Department of Insurance. The Department of Insurance is required to make the information available upon request.

The current regulations provide some broad definitions, outline what information should be included in the surveys, and provide a procedure for submitting the surveys to the Department of Insurance. However, based on the information, reports, and complaints we have received from consumers, insurers, and the auto body industry, there are several areas that require further clarification. For example, because there is no standard methodology specifically outlined in the statute (i.e. should insurers use the average rate of the shops surveyed or the median of rates obtained by survey), the surveys tend to produce inconsistent results, creating confusion when the insurers rely on the results to support their adjustment of the body shop estimate as reasonable within the meaning of CCR 2695.8(f) of the Fair Claims Settlement Practices regulations. As a result of the labor rates disputes that arise, the consumer is often placed in a position where they have to pay the difference between the shops labor rate and the rate the insurer will pay before the body shop releases the car. The proposed amendments will further define specific terms and more

clearly set out the purpose and use of the surveys.

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is set forth below.

Proposed section 2698.91(a)

Existing 2698.91(a) defines the term "auto body repair labor rate survey" as used in Ins. Code section 758(c). The proposed amendment would make the definition apply to the term "survey" as well. Additionally, the proposed amendment would require that the insurer conduct the survey in writing or maintain written records of information gathered by methods other than in writing. Moreover the amendment requires that the submitting insurer make the records of the data used to complete the survey available to the Department of Insurance upon request. The underlying information supporting the survey would become necessary if the accuracy of the survey were questioned. Additional language and punctuation changes have been made for clarification and consistency purposes. The change to this section is necessary to further define and clarify these terms in order to assist the reader in understanding the statute and regulations.

Proposed section 2698.91(b)

Existing 2698.91(b) defines "prevailing auto body rate" as employed in Ins. Code section 758(c). Confusion has arisen regarding the current definition. The proposed amendment clarifies the definition by more specifically describing the term. Additional language and punctuation changes have been made for clarification and consistency purposes. The change to this section is necessary to further define and clarify these terms in order to assist the reader in understanding the statute and regulations.

Proposed section 2698.91(c)

Existing 2698.91(c) requires the insurer to provide a description of what geographic areas were surveyed, a description of the methodology used to reach the prevailing rate, and the prevailing rate established for each geographic area surveyed. This information provides a context for the information specifically outlined in the statute. The proposed amendment further requires that the submitting insurer provide the labor rate charged by each particular shop surveyed, the total number of shops that responded to their survey, and the date the survey was completed.

Additionally, subsection (5) currently requires a description of the geographic area covered by the labor rate reported in the survey. The proposed amendment further defines what constitutes a geographic area, requires the insurer report the number of shops surveyed in the geographic area, and provide a list of zip codes or groups of zip codes that make up the area.

This section also currently requires that any confidential information not required by the statute or regulations be removed from the survey before it is submitted to Department of Insurance. This language has been moved to new section 2698.91(h). Additional language and punctuation changes have been made for clarification and consistency purposes. The change to this section is necessary to further clarify the statutory provisions and for organizational purposes and consistency.

Proposed section 2698.91(d)

Existing 2698.91(d) requires that the surveys be submitted to the Market Conduct Division of the Department of Insurance. The proposed amendment removes this language completely (see proposed section 2698.91(h)) and inserts language prohibiting an insurer from using rates it has negotiated with shops in its Direct Repair Program or any other auto body repair shop. The use of these negotiated rates may result in an artificially low prevailing rate for a specific geographic area. The amended section further states that the regulations do not preclude an insurer from using the non-contracted rate of its Direct Repair Program members. The change to this section is necessary to clarify the statutory provision and for organizational purposes.

Proposed section 2698.91(e)

Existing 2698.91(e) sets out the procedure for requesting copies of the surveys. The proposed amendments removes this language completely and inserts language specifically stating that nothing in these regulations requires an insurer to pay more than necessary to perform workmanlike repairs to a vehicle, as required by 2695.8(f) of the Fair Claims Practices Act (California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5). The change to this section is necessary to clarify the statutory provision and for organizational purposes.

Proposed section 2698.91(f)

This is a new section. The proposed amendment clarifies that nothing in these regulations prohibits an insurer from voluntarily negotiating or contracting with an auto body repair shop for a specific labor rate. The change to this section is necessary to clarify the statutory provisions.

Proposed section 2698.91(g)

This is a new section. The proposed amendment clarifies the purpose and use of the labor rate survey, stating that it may be used to support the reasonableness of an insurer's adjustment to a auto body shop repair estimate pursuant to section 2695.8(f)(3) of the Fair Claims Practices Act (California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5). The proposed amendment also limits the use of labor rate surveys for this purpose to those surveys less than 18 months old. The change to this section is necessary to clarify the statutory provisions.

Proposed section 2698.91(h)

This is a new section. Formerly 2698.91(d), the proposed amendment requires that the surveys be submitted to the Market Conduct Division of the Department of Insurance. The proposed amendment would allow the Department of Insurance to identify which Department should receive the surveys. The proposed amendment would further require that the surveys be submitted within 30 days of completing the labor rate surveys.

This section also currently requires that any confidential information not required by the statute or regulations be removed from the survey before it is submitted to Department of Insurance. This language has been moved from original section 2698.91(c). The change to this section is necessary for organizational purposes and consistency.

Proposed section 2698.91(i)

This is a new section. Formerly 2698.91(e), the proposed amendment sets out the procedure for requesting copies of the surveys. Minor changes have also been made to complete the citation to the California Public Records Act. The change to this section is necessary for organizational purposes.

Proposed section 2698.91(j)

This is a new section. The proposed amendment states that the Department of Insurance may request that the labor rate surveys be submitted in electronic version to aid the Department of Insurance in making the surveys available to the public. The change to this section is necessary to better implement the statutory provisions and simplify the submission and publication of the statutory requirements.

**IDENTIFICATION OF STUDIES AND REPORTS**

The Department of Insurance did not rely upon any technical, theoretical and/or empirical study, report or similar document in proposing this regulation. Rather, it relied on the extensive data and experience of the Department's Consumer Services Bureau, its Enforcement Division, its Legal Division, and extensive input from various trade organizations.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT**

Adoption of the amendments would not mandate the use of specific technologies or equipment.

**CONSIDERATION OF ALTERNATIVES**

The Commissioner has not identified alternatives to any of the sections or subdivisions thereof which would lessen any adverse impact on small businesses, yet still achieve the desired regulatory objective.

**IMPACT ON SMALL BUSINESS**

The Commissioner has determined that the proposed regulations do not affect small businesses. The regulations do not require any action on the part of any business or individual. Instead, it mandates that the Department of Insurance maintain information submitted to it and make the information available to the public if requested.

**PRE-NOTICE DISCUSSIONS**

The Commissioner conducted pre-notice public discussions pursuant to Government Code Section 11346.45(a) on June 8, 2005. Interested and affected parties were given an opportunity to present statements or comments with respect to the proposed amendments. The Commissioner considered these statements and comments in drafting the proposed amendments.

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