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February 3, 2023

Loretta Peace-Bunch
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1201 Mail Service Center
Raleigh, NC 27699-1201



Mrs. Peace-Bunch,

As a former member of the External Appraiser and Repair Task Force Board 2018-2020, I am writing to you in regards to Rules / Regulations. These were created as a result of the Task Force Board and were submitted to the OHA back in December 2019, then held at public hearing March 2020 at the NCOHA. I did attend the hearing and all proposed Rules/Regulations were passed with the exception of the Total Loss Rule that I was objecting too, and the OHA Hearing Committee voted NO against the NC Department of Insurance version, yet after amendments that I agreed to, the OHA Hearing Committee passed the Total Loss Rule. With time passing, the Total Loss needs re-addressing.

As a member of the Task Force Board the goal was to improve the auto collision claims process for appraisers, auto insurers, body shops and collision claimants while utilizing the Rules / Regulations that were currently in place.

With what I know now of how rules/regulations are to be written, I would have Objected to All the rules at the time. As a licensed motor vehicle damage appraiser ("MVDA"), the other "MVDA" appraisers and body shop owners and I; along with thousands of collision claimants are financially aggrieved being harmed by the current negative Rules/Regulations.

Specifically, many of the current Rules / Regulations are written only to favor Insurance Companies. That was not how things were proposed at the Task Force Board. With this being said, per G.S.150B-20 Petitioning an agency to adopt a rule, please take my letter as a Petitioning for amending current Rules/Regulations and definitions. In doing such the recommended amendments and adoptions I propose as per GS 150B-19.1(3)(5), are written in a more "clearer" and "unambiguous" manner when comparing to the current Rules / Regulations.

Listed on page 2 are the Rules / Regulations being petitioned and I have attached each Rule / Regulation with reasons for such amendments / adoptions and recommended wording. I have attached are signed petitions from North Carolina resident motor vehicle damage appraisers, collision claimants and personal injury attorneys.

Danny Wyatt

A handwritten signature in blue ink, appearing to read "Danny Wyatt".

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing pleading or paper by mailing a copy by U.S. Mail, in a first class postage prepaid envelope addressed on February 3, 2023 as follows:

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Danny H. Wyatt
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Petition to Amend

11 NCAC 04 .0418 TOTAL LOSSES ON MOTOR VEHICLES

"Substantial Economic Impact"

Reasons for adoption or amendment are stated prior to wording.

(a) The Commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurance company to adhere to the procedures in this Rule concerning the settlement of covered "total loss" motor vehicle claims when the failure is so frequent as to indicate a general business practice.

(b) For the purposes of this Rule, the following terms shall mean:

Current Language (No amendment) (1) "Licensed Motor Vehicle Dealer" means a person who is licensed by the North Carolina Department of Transportation Division of Motor Vehicles pursuant to Chapter 20, Article 12 of the N.C. General Statutes.

(2) Reasons for Recommended Adoption "Disinterested Appraiser"

The reason for requesting such adoption is for:

(1) Consumer protection. When a vehicle is declared a total loss, a claimant will go online to find an appraiser. The internet is full of scam artist appraisers claiming to be certified appraisers; they take the claimants money and run.

(2) Many nonresident appraisers may not be able to meet North Carolina's Nonresident License Requirements. The nonresident person may not be currently licensed as a resident and in good standing in that person's home state. The nonresident person's home state DOES NOT recognize a North Carolina a motor vehicle damage appraiser license on a reciprocal basis. Nonresident appraisers cannot physically inspect the claimant's motor vehicle in order to prepare an appraisal, and they pay no taxes to North Carolina or contribute to North Carolina's economy.

(3) North Carolina's resident appraisers are being financially harmed due to nonresident appraisal companies hire by claimants and insurers.

(4) "Any person" with a credit card, no matter where they are located, can go on line to NIPR's Licensing Center and get a North Carolina motor vehicle damage appraisers license.

Recommended Adoption "Disinterested Appraiser" means an individual who is a resident of North Carolina, or a resident of a county of a bordering state, which county is contiguous with the state line of North Carolina, licensed as a motor vehicle damage appraiser pursuant to G.S. 58-33-30(h)(1) of the N.C. General Statutes, as defined in 11 NCAC 04 .0425 DEFINITIONS.

Petition in redefining motor vehicle damage appraiser in 11 NCAC 04 .0425 DEFINITIONS is being requested in another petition.

Current Language (No amendment) (2) "Local Market Area" means an area within a 100-mile radius of the place where the motor vehicle is principally garaged. If a substantially similar motor vehicle is unavailable within a 100-mile radius, the insurance company may increase the radius in increments of 50 miles until a substantially similar motor vehicle can be found.

(3) Reasons to Amend "Published Regional Average Values"

The reason is amending current language is:

(1) At the time of rule adoption, the NADA or National Automobile Dealers Association Pricing Book actually owned by JD Power and around June 2021, the wording National Automobile Dealers Association Pricing Guide Book / NADA ceased to exist. Therefore the name change of NADA should be the J.D. Power Valuation Services.

(2) Kelly Blue Book is geared more consumer shopping and Kelly Blue Book does not provide the type of services to auto appraisers as J.D. Power Valuation Services does. Appraisers can easily go back several months to years to obtain vehicle values with J.D. Power Valuation Services; this cannot be accomplished with Kelly Blue Book.

(3) North Carolina motor vehicle damage appraisers use J.D. Power Valuation Services software as a reliable source for vehicle values for general vehicle value, diminished value claims and total loss appraisals.

(3) Current Language - "Published Regional Average Values" means values derived from printed or electronically published motor vehicle pricing guides recognized in the motor vehicle industry, including National Automobile Dealers Association Pricing Guide Book or Kelley Blue Book that analyze current and historical motor vehicle sales data taking into consideration the year, make, model and condition of the motor vehicle, motor vehicle market conditions, and geographic area to reach an average retail value of the motor vehicle.

(3) Recommended Amendment "Published Retail Value" means the retail value of the claimant's motor vehicle at the time of loss derived from printed or electronically version by the J.D. Power Valuation Services published pricing guide.

(4) Reasons to Amend "Substantially Similar Motor Vehicle"

The reason is amending current language is the words "trim level" needs to be included. When appraising vehicles for whether it is for non-damage value, the diminished value or total loss value, the correct trim level must be used. On total loss vehicles, insurance adjusters utilize third party Company's software such as CCC One and Mitchell total loss valuation services; it is common to see adjusters use different trim levels. The total loss car may have a "SEL" trim level, but the adjuster may use an "S" trim level or "SE" trim level which can lower the vehicle's value.

(4) Current Language "Substantially Similar Motor Vehicle" means a motor vehicle of the same make, model, and year of the damaged motor vehicle.

(4) Recommended Amendment "Substantially Similar Motor Vehicle" means a motor vehicle of the same year, make, model, and trim level of the damaged motor vehicle.

Current Language (No amendment) (c) When a motor vehicle is damaged in an amount which, inclusive of original and supplemental claims, equals or exceeds 75 percent of the pre-accident actual cash value as determined in accordance with Paragraph (d) of this Rule, an insurance company shall designate the motor vehicle as a "total loss" and pay the claimant the pre-accident value. In return, the insurance company shall receive possession of the legal title of the salvage of the total loss motor vehicle.

Current Language (No amendment) (d) If the insurance company and the claimant are unable to reach an agreement as to the actual cash value of the total loss motor vehicle, the settlement offer shall be based upon the following values:

4(d)(1) Reason to Amend Current Language The published regional average values of substantially similar motor vehicles; and

The reason for requesting such amendment is:

This does not make logical sense in getting published regional average values of substantially similar motor vehicles when it is the published retail value of the claimant's vehicle that is needed. The market search addresses the substantially similar motor vehicles retail value.

4(d)(1) Recommended Amendment The published retail value of the claimant's motor vehicle at the time of loss derived from printed or electronically version by the J.D. Power Valuation Services published pricing guide, and

4(d)(2) Current Language (No amendment) The retail cost of two or more substantially similar motor vehicles in the local market area when substantially similar motor vehicles are available or were available within 90 days of the accident to consumers in the local market area.

Recommended Adoption (d)(3) "Total Loss Appraisal Clause"

The reasons for requesting such adoption is:

(1) "Substantial Economic Impact" Total Loss Vehicle Values

Auto insurers do not expect total loss claimants to know of the North Carolina total loss rule (11 NCAC 04 .0418) which is to protect the total loss claimant(s). Auto insurers know this and take advantage of total loss claimant's lack of knowledge of how vehicle values are obtained.

Auto insurers use companies such as CCC ONE®, Mitchell and Audatex who work exclusively on behalf of insurance companies. Of the three, CCC ONE® report is the most popular one used followed by Mitchell, then Audatex. Since each vehicle is not exactly alike. **In 2022 it was not uncommon to increase a total loss vehicle value from \$1,500 to as much as \$9,000 against all three vehicle valuation reports.**

Example of numbers: NC has several auto salvage auctions where much more than 500 cars sold per week, when totaling up all auctions. Take 500 total loss vehicles under-appraised at \$1500 = \$75,000 a week x 52 weeks = "Substantial Economic Impact" of \$39,000,000.

(2) The recommended wording of the process is basically already is going on now with first party total loss claims; is just not in writing. It will be a similar process to GS 20-279.21(d1).

(3) Many third party claimants do not have collision insurance and many at-fault insurers give the third party claimants little or no choice in accepting the low ball offer from the at-fault insurers.

(4) The process will be in writing where the claimant, the insurer and the disinterested appraiser all understand their role having a written guideline to follow, along in speeding up settling the claim.

(d3) "Total Loss Appraisal Clause"

In the event insurance company and the first party or the third party claimant are still unable to reach an agreement as to the retail value of the total loss motor vehicle, then on the written demand of either the claimant or the insurer, each shall select a competent and disinterested appraiser. The claimant and the insurer shall submit each appraiser's contact information within 10 business days after the demand. The total loss vehicle shall be made available for inspection for each appraiser to physically inspect the claimant's motor vehicle. No other person shall inspect the total loss motor vehicle for the appraiser appraising the vehicle. In the event the motor vehicle has been stolen and not recovered, a physical inspection is not required. When determining the total loss motor vehicle retail value, the appraisers may use the J.D. Power Valuation Services published pricing guide retail value at the time of loss and the retail cost average of two or more substantially similar motor vehicles in the local market area. "Local Market Area" means an area within a 100-mile radius of the place where the motor vehicle is registered or principally garaged. If a substantially similar motor vehicle is unavailable within a 100-mile radius, the radius may be increased in increments of 50 miles until a substantially similar motor vehicle can be found. Both appraisers shall give consideration year, make, model, trim level, miles, and options to that of the claimant's motor vehicle and that of the substantially similar motor vehicles. The appraisers may adjust for options, equipment, and mileage, less the cost of unrepaired damage that pre-existed the accident. The appraisers shall give consideration when evidence presented by the claimant such as receipts, photographs, or other documentation that the total loss motor vehicle owned by him or her was in a better condition prior to the accident than suggested by the insurer's settlement offer. After completion of the appraisal, both appraisers shall submit the appraisal to the claimant or the insurer, and both appraisers after shall exchange appraisals within 5 business days. Should the appraisers fail to agree, they shall then select a disinterested appraiser to serve as an umpire. If the appraisers cannot agree upon an umpire within 5 business days, then either the claimant or the insurer may request that a magistrate resident in where the insured motor vehicle is registered or principally garaged to select the umpire. The appraisers shall then submit their differences to the umpire. The umpire is not required to inspect the total loss motor vehicle. When the selected umpire receives payment from both parties, the umpire shall have 3 business days to render their decision. The umpire then shall prepare a report determining the retail value of the total loss motor vehicle. In preparing the

report, the umpire shall not award appraised values that are higher or lower than the determinations of the two appraisers. The agreement of the two appraisers or one appraiser agreeing to the report of the umpire, shall be binding. Each appraiser shall be paid by the party selecting the appraiser and the expenses of appraisal and umpire shall be paid by the parties equally. For purposes of this section, "appraiser" and "umpire" shall mean a person licensed as a motor vehicle damage appraiser under G.S. 58-33-30(h)(1) as defined in 11 NCAC 04.0425 DEFINITIONS.

As proof of the appraiser's inspection, the appraiser shall take a digital image their North Carolina Department of Insurance photo ID or driver's license by placing it near the motor vehicle's VIN plate at windshield, or VIN Label of the driver's side of the motor vehicle, or beside the license tag of the motor vehicle.

A physically inspection will not be required under adverse weather or travel conditions.

Any appraiser who does not physically inspect the claimant's motor vehicle or refuses to exchange appraisal, shall be subject to a 30 day suspension of license.

An appraiser or umpire fails to comply with subsection shall be subject to a 30 day suspension of license.

An insurer that fails to comply with subsection shall be subject to a civil penalty under G.S. 58-2-70.

Current Language (No amendment) If no substantially similar motor vehicle is able to be located in the local market area, the settlement offer may be based upon quotations obtained from two or more licensed motor vehicle dealers located within the local market area.

Current Language (No amendment) (e) The settlement offer may be adjusted for condition, options, equipment, and mileage, less the cost of unrepaired damage that pre-existed the accident.

Current Language (No amendment) (f) Applicable sales tax and vehicle registration fees shall be included as part of the actual cash value settlement of the total loss motor vehicle, except where the claimant retains the salvage vehicle.

Petition to Amend

11 NCAC 04 .0419 MOTOR VEHICLE REPAIR ESTIMATES

Reasons for adoption or amendment are stated prior to wording.

(a) The Commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurance company to adhere to the procedures in this Rule concerning repair estimates on covered motor vehicle damage claims when the failure is so frequent as to indicate a general business practice.

Petition to Amend TITLE

Recommended Amendment 11 NCAC 04 .0419 MOTOR VEHICLE DAMAGE APPRAISALS

The reason for requesting amendment is:

(1) Insurers themselves DO NOT repair damage vehicles.

(2) The North Carolina Personal Auto Policy under section "ADDITIONAL DUTIES FOR COVERAGE FOR DAMAGE TO YOUR AUTO" clearly states on line 3. " Permit us to inspect and appraise the damaged property before its repair or disposal."

(3) The North Carolina Personal Auto Policy under section "LIMIT OF LIABILITY" clearly state:

Our limit of liability will be the lesser of the:

1. Actual cash value of the stolen or damaged property;

2. Amount necessary to repair or replace the property with other property of like kind and quality.

(b) For the purposes of this Rule, the following terms shall mean:

(b1) Petition to Amend "Digital Inspection"

The reason for requesting amendment is:

(1) A digital inspection is merely a starting point for the insurer to prepare a "damage appraisal," not a repair estimate.

(2) The majority of desk appraisals are conducted by people who have no actual hands on collision repair experience to prepare a damage appraisal by a digital inspection. It is a known fact in the collision repair industry that insurance adjusters write damage appraisals based only what can be visually seen.

(3) To prepare a proper damage appraisal, a "Physical Inspection" should be required at all times except when the damage is "very minor."

(Example Seen outside damage with obvious inner panel damage)

Insurer's 1ST Repair Estimate Sect LT Quarter panel



Supplement of Record 2 with Summary (S02)

(Obvious inner panel damage)

Insurer's Supplement 2 Sect LT Uniside assy quarter panel cut roof rl & rocker



Current Language Petition to Amend "Digital Inspection" means an inspection of a damaged motor vehicle conducted by using digital photographs, videos, or other digital evidence through an electronic processing system authorized by an insurer.

Recommended Amendment "Digital Inspection" means a review of the damaged the motor vehicle by observing digital photographs, videos, or other digital evidence for the insurer to prepare for a "Physical Inspection" for appraising the cost of repairing the damaged motor vehicle.

(b2) Petition to Amend False Definition "Licensed Motor Vehicle Damage Appraiser"

The reason for requesting amendment is:

150B-19. Restrictions on what can be adopted as a rule.

An agency may not adopt a rule that does one or more of the following:

- (1) "Implements or interprets a law unless that law or another law specifically authorizes the agency to do so."
- (2) "The agency adopted a rule that interprets the law and enlarged the scope of a profession, occupation, or field of endeavor for which an occupational license is required."

Current Language False Definition "Licensed Motor Vehicle Damage Appraiser" means an individual who is licensed as a motor vehicle damage appraiser pursuant to Article 33 of Chapter 58 of the N.C. General Statutes or is licensed in another state whose licensing requirements are substantially similar to or exceed those established under that Article.

Comment: GS 58-33 Statute(s) does not state "an individual who is licensed as a motor vehicle damage appraiser that a licensed in another state whose licensing requirements are substantially similar to or exceed those established under that Article."

Actual Language G.S. 58-33-30(h)(2) Nonresident. (a) An individual may qualify for a license under this Article as a nonresident in another state or territory of the United States if he holds a like license. An individual may qualify for a license as a nonresident motor vehicle damage appraiser or a nonresident adjuster if the applicant's state of residency does not offer such licenses and such applicant meets all other requirements for licensure of a resident. **(NC Attorney General Advisory Attached)**

Abernathy v. Commissioners

"When construing a statutory provision, the words in the statute are to be given their natural or ordinary meaning, unless the context of the provision indicates that they should be interpreted differently. *Abernathy v. Commissioners*, 169 N.C. 631, 86 S.E. 577 (1915)." **"It is only when the language of a statute is unclear or ambiguous that a court should attempt to interpret the language of a statute** in accordance with what the court presumed the Legislature intended." *State v. White*, 58 N.C. App. 558, 294 S.E.2d 1 (1982).

The North Carolina Court of Appeals may find the **current definition** as:

- (1) In violation of constitutional provisions, or
- (2) In excess of statutory authority or jurisdiction of the Commissioner, or
- (3) Made upon unlawful proceedings, or
- (4) Affected by other errors of law, or
- (5) Unsupported by material and substantial evidence in view of the entire record as submitted, or
- (6) Arbitrary or capricious.

Comment: Many nonresident appraisers may not be able to meet North Carolina's Nonresident License Requirements. The nonresident person MAY NOT be currently licensed as a resident and in good standing in that person's home state.

58-33-32. Interstate reciprocity in producer licensing.

(c) Unless denied licensure under G.S. 58-33-30 or G.S. 58-33-50, a nonresident person shall receive a nonresident producer license if:

- (1) The person is currently licensed as a resident and in good standing in that person's home state;
- (4) The person's home state awards nonresident producer licenses to residents of this State on a reciprocal basis.

G.S. 58-33-30(i)

The nonresident person's home state MAY NOT recognize a North Carolina a motor vehicle damage appraiser license.

(i) Retaliatory Provision. - Whenever, by the laws or regulations of any other state or jurisdiction, any limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon residents of this State who are nonresident applicants or licensees of such other state or jurisdiction in addition to, or in excess of, those imposed on nonresidents under this Article, the same such requirements shall be imposed upon such residents of such other state or jurisdiction. This subsection does not apply to fees charged to insurance producers.

Comment: Many nonresident appraisers cannot physically inspect the claimant's motor vehicle in order to prepare an appraisal, and they pay no taxes to North Carolina or contribute to North Carolina's economy.

Comment: North Carolina's resident appraisers are being financially harmed due to nonresident appraisal companies with this current definition/rule in place.

Comment: "Any person" with a credit card, no matter where they are located, can go on line to NIPR's Licensing Center and get a North Carolina motor vehicle damage appraisers license.

Recommended Amendment

"Licensed Motor Vehicle Damage Appraiser" means an individual who is a resident of North Carolina, or a resident of a county of a bordering state, which county is contiguous with the state line of North Carolina, licensed as a motor vehicle damage appraiser pursuant to G.S. 58-33-30(h)(1) of the N.C. General Statutes and as defined in 11 NCAC 04 .0425 DEFINITIONS.

(b 3) Petition to Amend "Physical Inspection"

The reason for requesting such amendment is:

(1) The first party appraisal clause on repairing may be invoked and the claimant's selected appraiser will want to physically inspect the vehicle.

Current Language Petition to Amend

"Physical Inspection" means an inspection of a damaged motor vehicle conducted in person by an insurer's representative.

(b3) Recommended Amendment

"Physical Inspection" means an inspection of a damaged motor vehicle conducted in person by an insurer's representative or claimant's representative.

(c) When a motor vehicle is damaged, and the claim is either covered by an insurer for a first-party claim or liability is established for a third-party claim, the insurer shall adhere to the following procedures concerning repair estimates:

(No amendment) (c1) If the insurer requires the claimant to obtain more than two estimates of property damage, any cost of the additional estimate(s) shall be paid by the insurer.

(c2) Petition to Amend "Physical or digital inspection time frame"

The reason for requesting such amendment is:

(1) This section of rule is causing harm to collision claimants.

(2) A third party claimant may be in a rental car through their insurer, and with the at-fault insurer only having to provide a verbal or written explanation of the reason the inspection has not occurred, the claimant may run out of rental car time, having no other means of transportation other than the rental car.

(3) This rule is in favor of insurers allowing the insurer to intentionally drag their feet in having the damaged vehicle inspected in order to save money by not having to pay for a rental car.

(4) The repair facility is held up on ordering parts and repair.

(c2) Current Language – An insurer shall perform a physical or digital inspection of the damaged vehicle within 10 business days of receipt of the claim. If the insurer cannot perform the inspection in the time frame, the insurer shall provide the claimant with a verbal or written explanation of the reason the inspection has not occurred. The reason for the delay shall be documented in writing within the claim file.

(c2) Recommended Amendment

An insurer shall perform a digital or physical inspection of the damaged vehicle within 3 business days of receipt of the claim. If the insurer cannot perform the digital or physical inspection within the 3 business days, the insurer shall appoint an independent licensed motor vehicle damage appraiser to physically inspect and prepare a damage appraisal within 3 business days. The reason for the delay shall be documented in writing within the claim file.

(c3) Petition to Amend "Inspection request"

The reason for requesting such amendment is:

- (1) The wording "if requested by the claimant," allows insurers to drag perform a physical inspection out.
- (2) Normally the claimant is not aware a physical inspection is needed until the body shop informs the claimant, then claimant has to jump through hoops with the insurer to have the insurer perform a physical inspection.
- (3) Repairs and any additional parts needed to repair the damage vehicle are held up and rental car time is running out.

(c3) Current Language - No insurer shall refuse to perform a physical inspection of the damaged vehicle if requested by the claimant.

(c3) Recommended Amendment

No insurer shall refuse perform a physical inspection of the damaged vehicle when requested by the claimant or the claimant's chosen repair facility within 2 business days of the request.

(c4) Petition to Amend "May satisfy"

The reason for requesting such amendment is:

- (1) The wording "may satisfy" allows insurers to drag their feet having a having a licensed motor vehicle damage appraiser conduct the inspection of the damaged vehicle.

(c4) Current Language The insurer may satisfy the inspection requirements of this Rule by having a licensed motor vehicle damage appraiser conduct the inspection of the damaged vehicle.

(c4) Recommended Amendment

The insurer shall satisfy the inspection requirements of this Rule by having a licensed motor vehicle damage appraiser conduct the physical inspection of the damaged vehicle within 2 business days of the request.

(c5) Petition to Abolish or Amend "Delay of supplemental inspection"

The reason for requesting such amendment is:

- (1) This rule allows insurers to drag their feet on the claim
- (2) Repairs and ordering parts are put on hold
- (3) Rental car time is running out.

(c5) Current Language An insurer shall provide a verbal or written explanation to the claimant if there is any delay in responding to a request for a supplemental inspection. The reason for the delay shall be documented in writing in the claim file.

(c5) Recommended Amendment

Upon request by the claimant or the claimant's chosen repair facility, the insurer or insurer's representative shall perform a supplemental inspection within 2 business days of the request.

(c6) & (c7) Petition to Amend "Upon request"

The reason for requesting such amendment is:

- (1) The claimant should not have to request the insurer to provide copies of the original estimate and all supplemental estimates to the claimant.
- (2) Many claimants do make diminished value claims and the final supplement repair estimate is always need by the appraiser appraising the vehicle for diminished value.
- (3) The insurer may be hiding a supplement repair estimate that shows the motor vehicle is actually a total loss.

(6) Current Language An insurer shall, upon request, provide copies of the original estimate and all supplemental estimates to the claimant.

Recommended Amendment

An insurer shall provide copies of the original damage appraisal and all supplemental appraisals to the claimant.

(c7) Current Language Petition to Amend

When the insurer elects to have the damaged vehicle repaired, the insurer shall, upon request of the claimant, furnish the claimant with a copy of its estimate. This estimate shall contain the name and address of the insurer and, if the estimate was prepared by someone other than the insurer, the name and address of the person preparing the estimate. If there is a dispute concerning pre-existing damage to the vehicle that the insurer does not intend to have repaired, the extent of such damage shall be stated in the estimate.

(c7) Recommended Amendment Language

When the insurer elects to have the damaged vehicle repaired, the insurer shall furnish the claimant with a copy of its damage appraisal and all supplemental appraisals. The damage appraisal and supplemental appraisal shall contain the name and address of the insurer and, if the damage appraisal or the supplemental appraisal was prepared by someone other than the insurer, the name and address of the person preparing damage appraisal or the supplemental appraisal. If there is a dispute concerning pre-existing damage to the vehicle that the insurer does not intend to have repaired, the extent of such damage shall be stated in the appraisal.

(8) Recommended Adoption Duly Licensed Appraiser

The reason for requesting such adoption is:

(1) North Carolina's resident damage motor vehicle appraisers are being financially harmed by repair facilities appraising damages on behalf as an appraiser in absence of the insurance company's adjuster.

(2) The insurer's contracted preferred repair shop estimator is appraising the damage motor vehicle on behalf of the insurer. When the preferred repair shop is not repairing under contract or agreement with insurer, then that shop estimator writes repair estimates and is subject to work with a damage motor vehicle appraiser. Therefore the preferred repair shop estimator is acting as an unlicensed licensed motor vehicle damage appraiser. This is why insurers do their best to steer claimants to the insurer's preferred repair shop, they do not have to pay for an adjuster or a motor vehicle damage appraiser to inspect and appraise the damages.

(3) **58-33-26. General license requirements.**

(a) No person shall act as or hold himself or herself out to be an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser unless duly license.

(4) **58-33-10. Definitions.**

(14) "Motor vehicle damage appraiser" means an individual who, for salary, fee, commission, or other compensation of any nature, regularly investigates or advises relative to the nature and amount of damage to motor vehicles located in this State or the amount of money deemed necessary to effect repairs thereto and who is not:

d. An individual who, incident to his regular employment in the business of repairing defective or damaged motor vehicles, investigates and advises relative to the nature and amount of motor vehicle damage or the amount of money deemed necessary to effect repairs thereto.

(8) Recommended Language Duly Licensed Appraiser

No repair facility or repair facility employee shall appraise damages to a motor vehicle on behalf of the insurer unless duly license as a licensed motor vehicle damage appraiser.

(9) Recommended Adoption "Necessary Repairs and Procedures".

The reason for requesting such adoption is:

All vehicle manufactures have required repair procedures when repairing a damaged motor vehicle and insurers and auto-body shops know this, but insurers do not included all necessary repairs as required. The computer-estimating software provides auto insurers and auto-body shops information of the included and non-included repair procedures, along with other vital repair information.

(9) Recommended Language “Necessary Repairs and Procedures”.

When appraising the claimant’s damaged motor vehicle in repairing, the insurer, the insurer's representative or claimant’s representative damage appraisal shall contain all known necessary repairs and repair procedures established within the estimating software. The estimating software shall not be manipulated in any manner to add or remove known necessary repairs established within the estimating software and shall be properly listed in its respected category provided by the estimating software.

(10) Recommended Adoption Use of "Nonoriginal crash repair part"

The reason for requesting such adoption is:

All insurers are allowed to use aftermarket parts not manufactured by the vehicle manufacturer. The issue is many of these parts are not equal in terms of fit, quality, performance and warranty to the original manufactured parts they replace. Auto insurers tell body shops what supplier to order such parts from. These suppliers may be out of state, there may be 10 different suppliers the insurer is telling the shop to buy from all 10 suppliers. If an insurer requires such, then the insurer can order the parts themselves and warranty the parts.

(10) Recommended Adoption Language Use of “Nonoriginal crash repair part”

"Nonoriginal crash repair part" as that term is used in G.S 58-36-95, refers to sheet metal and/or plastic parts - generally components of the exterior of a motor vehicle - that are not manufactured by or for the original equipment manufacturer of the vehicle. The “non-original crash repair parts” are required to be at least equal in terms of fit, quality, performance and warranty to the original manufactured parts they replace. When the insurer elects to have the damaged vehicle repaired, the insurer may elect to replace damaged parts not made by the original manufacturer. When the insurer requires the use of Nonoriginal crash repair parts, the insurer shall warranty the parts not made by the original manufacturer.

When a Nonoriginal crash repair part is found not to be at least equal in terms of fit, quality, performance and warranty to the original manufactured parts they replace, the insurer shall pay and take possession or pay all cost in returning the parts and replace the Nonoriginal crash repair with the original vehicle manufacturer’s parts. No insurer shall specify a specific supplier of non-original or original replacement parts.

(11) Recommended Adoption “LIKE KIND AND QUALITY”

“LIKE KIND AND QUALITY” as that term is used in 11 NCAC 04 .0426. No insurer shall require the use of an aftermarket part in the repair of a motor vehicle unless the aftermarket part is at least equal to the original part in terms of fit, quality, performance, and warranty. Insurers specifying the use of aftermarket parts shall include in the estimate the costs of any modifications made necessary by the use of aftermarket parts.

(11) Recommended Adoption with amendment "LIKE KIND AND QUALITY"

"LIKE KIND AND QUALITY" as that term is used in 11 NCAC 04 .0426. No insurer shall require the use of an aftermarket part in the repair of a motor vehicle unless the aftermarket part is at least equal to the original part in terms of fit, quality, performance, and warranty to the original manufactured parts they replace. Insurers specifying the use of aftermarket parts shall include in the estimate the costs of any modifications made necessary by the use of aftermarket parts. When any modifications of the aftermarket part fails to be at least equal to the original part in terms of fit, quality, performance, and warranty, the insurer shall pay for the aftermarket parts and take possession or pay all cost in returning the aftermarket parts, replacing the aftermarket parts with the original vehicle manufacturer's parts.

(12) Recommended Adoption "Diminution in fair market value"

The reason for requesting such adoption is:

- (1) Many third party claimants are not aware they are able to make a claim for diminished value until they find out on their own.
- (2) Insurers should be required to be 100% transparent of the claimant's rights
- (3) 11 NCAC 04 .0421 HANDLING OF LOSS AND CLAIM PAYMENTS paragraph (5) allows a third-party claimant to assert a claim for diminution in fair market value

(12) Recommended Adoption Language "Diminution in fair market value"

When the insurer elects to repair a third-party claimant's damaged vehicle, the insurer shall inform the third-party claimant in writing, that the claimant may have a right to assert a claim for "diminution in fair market value," pursuant to Article GS 20-279.21.(d1), 11 NCAC 04 .0421 and as defined in 11 NCAC 04 .0425. Pursuant to Article GS 20-279.21 (o) An insurer that fails to comply with subsection (d1) shall be subject to a civil penalty under G.S. 58-2-70.

(13) Recommended Adoption "North Carolina Anti-Steering Law"

The reason for requesting such adoption is:

- (1) The North Carolina Anti-Steering Law is in place, yet the claims adjuster blows it off with many excuses why the claimant needs to go to one of the insurer's recommended repair shops.
- (2) Insurers should be required to be 100% transparent of the claimant's right to choose body shop.

(13) Recommended Adoption "North Carolina Anti-Steering Law"

Pursuant to Article 58-33-180 of the N.C. General Statutes, an insurer or insurer's representative estimate shall state the entire statute on the second page of all repair estimates.

GS 58-33-180 Motor vehicle repairs; selection by claimant

- (a) A policy covering damage to a motor vehicle shall allow the claimant to select the repair service or source for the repair of the damage.

(b) The amount determined by the insurer to be payable under a policy covering damage to a motor vehicle shall be paid regardless of the repair service or source selected by the claimant.

(b1) No insurer or insurer representative shall recommend the use of a particular motor vehicle repair service without clearly informing the claimant that

- (i) the claimant is under no obligation to use the recommended repair service,
- (ii) the claimant may use the repair service of the claimant's choice,
- (iii) the amount determined by the insurer to be payable under the policy will be paid regardless of whether or not the claimant uses the recommended repair service, and
- (iv) that the insurer or insurer representative has, at the time the recommendations are made, a financial interest in the recommended motor vehicle repair service. No insurer shall require that the insured or claimant must have a damaged vehicle repaired at an insurer-owned motor vehicle repair service.

(b2) The provisions of subsection (b1) of this section shall be included in nonfleet private passenger motor vehicle insurance policy forms promulgated by the Bureau and approved by the Commissioner.

(c) Any person who violates this section is subject to the applicable provisions of G.S. 58-2-70 and G.S. 58-33-46, provided that the maximum civil penalty that can be assessed under G.S. 58-2-70(d) for a violation of this section is two thousand dollars (\$2,000).

(d) As used in this section, "insurer representative" includes an insurance agent, limited representative, broker, adjuster, and appraiser. (1993, c. 525, s. 2; 2001-203, s. 26; 2001-451, s. 1; 2003-395, s. 1.)

Recommended Adoption First Party Repair Appraisal Clause

The reason for requesting such adoption is:

(1) Many times there is a difference in opinion of needed repairs between the insurer and claimant's repair shop. Such difference in opinion drag repair time out, leaving the claimant stranded without their motor vehicle.

(2) There are no current written guidelines of time frame the First Party Repair Appraisal Clause is to take place.

Recommended Language First Party Repair Appraisal Clause

When a first party claimant and the insurer fail to agree to the amount necessary to repair or replace the property with other property of like kind and quality, either claimant or the insurer may demand an appraisal of the loss. The claimant and the insurer shall select their own disinterested appraiser. The claimant and the insurer shall submit each selected appraiser's contact information within 5 business days and the selected appraisers shall contact each other within 5 business days after the contact information has been provided. In order to prepare an appraisal in the repairing of the claimant's motor vehicle, both appraisers shall physical inspect the claimant's motor vehicle. The insurer's representative

or claimant's representative damage appraisal shall contain all known necessary repairs and repair procedures established within the estimating software. The estimating software shall not be manipulated in a manner to add or remove known necessary repairs established within the estimating software and shall be properly listed in its respected category provided by the estimating software. After completion of appraisal, the appraisers shall exchange appraisals within 5 business days. Should the appraisers fail to agree, they shall select a competent and disinterested appraiser to serve as an umpire within 5 business days. The appraisers shall then submit their appraisals and photos of the claimant's damage vehicle to the umpire. When the selected umpire receives payment from both parties, the umpire shall have 5 business days to render a decision. The umpire shall agree to either appraiser's appraised amount, or render a decision award amount not higher or lower to either appraiser's appraised amount. A decision agreed to by any two will be binding. If the appraisers cannot agree upon an umpire within 5 business days, either the claimant or the insurer may request that a magistrate resident in the county where the insured has residency, or the county the motor vehicle is registered to select an umpire. The claimant and the insurer shall pay its chosen appraiser; and equally bear the expenses of the umpire.

For purposes of this section, "appraiser" and "umpire" shall mean a person licensed as a motor vehicle damage appraiser under G.S. 58-33-26 and G.S. 58-33-30 and as defined in 11 NCAC 04 .0425 DEFINITIONS.

No other person shall invoke this appraisal clause on behalf of the claimant or the insurer.

An appraiser or umpire fails to comply with subsection shall be subject to a 30 day suspension of license.

As proof of the appraiser's inspection, the appraiser shall take a digital image their North Carolina Department of Insurance photo ID or driver's license by placing it near the motor vehicle's VIN plate at windshield, or VIN Label of the driver's side of the motor vehicle, or beside the license tag of the motor vehicle.

Petition to Amend

11 NCAC 04 .0420 WRITTEN CONFIRMATION OF ORAL AGREEMENTS

Reasons for adoption or amendment are stated prior to wording.

(a) Current Language Petition to Amend

(a) Once an insurer accepts liability or advises a claimant to have damaged property repaired with the understanding that the insurer will pay or reimburse the claimant, the insurer shall, if requested by the claimant, confirm the understanding in writing. Such writing shall clearly state the responsibility assumed by the insurer for payment of incurred costs.

The reason for requesting such amendment is:

- (1) Adjusters like to talk fast, not giving the claimant time to prepare and take notes.
- (2) Adjusters know that most claimants have never been involved in an accident and the adjuster will lie to the claimant.
- (3) Adjuster claim they will put things in writing and never do.

(a) Recommended Amendment

(a) Once an insurer accepts liability or advises a claimant to have damaged property repaired with the understanding that the insurer will pay or reimburse the claimant, the insurer shall confirm the understanding in writing. Such writing shall clearly state the responsibility assumed by the insurer for payment of incurred costs.

Current Language Petition to Amend

(b) If so requested by the claimant, the insurer or its representative shall confirm in writing all other oral agreements between itself or its representative and the claimant.

The reason for requesting such amendment is:

- (1) The wording "if so requested" by the claimant." This wording allows insurers not confirm in writing all other oral agreements between itself or its representative and the claimant.

(b) Recommended Amendment

The insurer or its representative shall confirm in writing all other oral agreements between itself or its representative and the claimant.

Recommended Adoption Disclosure of "North Carolina Anti-Steering Law"

The reason for requesting such adoption is:

- (1) The North Carolina Anti-Steering Law is in place, yet so many claims adjuster blows it off with many excuses why the claimant needs to go to one of the insurer's recommended repair shops.
- (2) Insurers should be required to be 100% transparent of the claimant's right to choose body shop.

Recommended Adoption “North Carolina Anti-Steering Law”

Once an insurer accepts liability or advises a claimant to have damaged property repaired shall provide the claimant a copy of Article 58-33-180 of the N.C. General Statutes entire wording.

GS 58-33-180 Motor vehicle repairs; selection by claimant

(a) A policy covering damage to a motor vehicle shall allow the claimant to select the repair service or source for the repair of the damage.

(b) The amount determined by the insurer to be payable under a policy covering damage to a motor vehicle shall be paid regardless of the repair service or source selected by the claimant.

(b1) No insurer or insurer representative shall recommend the use of a particular motor vehicle repair service without clearly informing the claimant that

- (i) the claimant is under no obligation to use the recommended repair service,
- (ii) the claimant may use the repair service of the claimant's choice,
- (iii) the amount determined by the insurer to be payable under the policy will be paid regardless of whether or not the claimant uses the recommended repair service, and
- (iv) that the insurer or insurer representative has, at the time the recommendations are made, a financial interest in the recommended motor vehicle repair service. No insurer shall require that the insured or claimant must have a damaged vehicle repaired at an insurer-owned motor vehicle repair service.

(b2) The provisions of subsection (b1) of this section shall be included in nonfleet private passenger motor vehicle insurance policy forms promulgated by the Bureau and approved by the Commissioner

(c) Any person who violates this section is subject to the applicable provisions of G.S. 58-2-70 and G.S. 58-33-46, provided that the maximum civil penalty that can be assessed under G.S. 58-2-70(d) for a violation of this section is two thousand dollars (\$2,000).

Petition to Amend and Adopt

11 NCAC 04 .0421 HANDLING OF LOSS AND CLAIM PAYMENTS

Reasons for adoption or amendment are stated prior to wording.

(a) The Commissioner shall consider the failure by an insurer to adhere to the procedures in this Rule concerning loss and claim payments as prima facie evidence violation of G.S. 58-63-15(11) when such failure is so frequent as to indicate a general business practice.

(b) When a motor vehicle is damaged and the claim is covered by an insurer, the insurer shall adhere to the following procedures concerning loss and claim payments.

(No amendment) (1) Loss and claim payments shall be mailed or delivered within 10 business days after the claim is settled.

(No amendment) (2) Unless the insured consents, no insurer shall deduct premiums owed by the insured on a policy from a loss or claim payment made under another policy.

(No amendment) (3) No insurer shall withhold the entire amount of a loss or claim payment because the insured owes premium or other monies in an amount less than the loss or claim payment.

(No amendment) (4) If a release or full payment of claim is executed by a claimant involving a repair to a motor vehicle, it shall not bar the right of the claimant to assert a claim for property damages unknown to either the claimant or to the insurance carrier prior to the repair of the motor vehicle if the damages were caused by the accident and could not be determined or known until after the repair or attempted repair of the motor vehicle. This claim shall be asserted within the statute of limitations set forth in G.S. 1-52(16).

(5) Petition to Amend

The reason for requesting such amendment is:

(1) Many third party claimants are not aware they are able to make a claim for diminished value until they find out on their own.

(2) Insurers should be required to be 100% transparent of the claimant's rights

5) Current Language - If a release or full payment of claim is executed by a third-party claimant involving a repair to a motor vehicle, it shall not bar the right of the third-party claimant to assert a claim for diminution in fair market value pursuant to G.S. 20-279.21(d1) caused by the accident and could not be determined or known until after the repair or attempted repair of the motor vehicle. This claim shall be asserted within the statute of limitations set forth in G.S. 1-52(16).

(5) Recommended Amendment

If a release or full payment of claim is executed by a third-party claimant involving a repair to a motor vehicle, the insurer shall inform the third-party claimant's right to assert a claim for diminution in fair market value pursuant to G.S. 20-279.21(d1) caused by the accident and could not be determined or known until after the repair or attempted repair of the motor vehicle. Pursuant to G.S. 20-279.21 (o) An insurer that fails to comply with subsection (d1) is subject to a civil penalty under G.S. 58-2-70. This claim shall be asserted within the statute of limitations set forth in G.S. 1-52(16).

(No amendment) (c) For purposes of this Rule, "diminution in fair market value" shall be as defined in 11 NCAC 04 .0425.

(d) Petition to Amend

The reason for requesting such amendment is:

(1) Consumer protection. When a claimant is looking for an appraiser in regards to a diminished value or total loss appraisal, a claimant will go online to find an appraiser. The internet is full of scam artist appraisers claiming to be certified appraisers. Many scam artist appraisers claim to be in North Carolina, yet they are not. These scam appraisers drag claims out and take the claimant's money and run. This also goes for appraisers who are hired by insurance companies. North Carolina claimants want an appraiser from North Carolina.

(2) Insurers do drag out the diminished value claim process, this will speed up settling diminished value claims.

Current Language (d) If a claim for diminution in fair market value is asserted pursuant to this Rule and G.S. 20-279.21(d1), the written appraisal reports prepared by each appraiser shall be exchanged with the other party.

(d) Recommended Amendment

(d) When a claim for diminution in fair market value is asserted pursuant to this Rule and G.S. 20-279.21(d1), the insurer shall respond to the claimant's claim for diminution in fair market value within 5 business days. When the claimant and the insurer fail to agree as to the difference in fair market value of the vehicle immediately before the accident and immediately after the accident, both the claimant and the insurer shall select a disinterested appraiser and the claimant and the insurer shall submit each selected appraiser's contact information within 5 business days. The selected appraisers shall contact each other within 10 business days. Upon request by the claimant or the insurer the appraiser shall physical inspect the claimant's motor vehicle, and after completion of the appraisal, the appraisers shall exchange appraisals within 5 business days. Should the appraisers fail to agree, they shall select a competent and disinterested appraiser to serve as an umpire within 15 business days. The appraisers shall then submit their appraisals to the umpire. The umpire shall not award damages that are higher or lower than the determinations of the appraisers and shall file the report with the appraisers, the insurer and the claimant. If the appraisers cannot agree upon an umpire within 15 business days, either the claimant or the insurer may request that a magistrate resident in the county where the insured motor vehicle is registered or the county where the accident occurred select the umpire. When the selected umpire receives payment from both parties, the umpire shall have 3 business days to render their decision.

For purposes of this section, "appraiser" and "umpire" shall mean a person licensed as a motor vehicle damage appraiser under G.S. 58-33-26 and G.S. 58-33-30 and as defined in 11 NCAC 04 .0425 DEFINITIONS.

An appraiser or umpire fails to comply with subsection shall be subject to a 30 day suspension of license.

No other person shall inspect the claimant's vehicle in absence of the selected appraiser.

A physical inspection shall not be required when such damage to the motor vehicle sustained was of bolt-on cosmetic parts, having non-structural panel damage.

A physical inspection may not be required when value in the event of adverse weather travel conditions.

An insurer that fails to comply with subsection G.S. 20-279.21(d1) shall be subject to a civil penalty under G.S. 58-2-70.

As proof of the appraiser's inspection, the appraiser shall take a digital image their North Carolina Department of Insurance photo ID or driver's license by placing it near the motor vehicle's VIN plate at windshield, or VIN Label of the driver's side of the motor vehicle, or beside the license tag of the motor vehicle.

Recommended Adoption Under-insured - Non-insured Diminution in Fair Market Value

Claimants

(1) Many third party claimants have to make a motor vehicle damage claim with their insurer due the at-fault party not having insurance or being underinsured. They have a right to know they can make a diminished value claim with their own insurer.

Recommended Language

When the liability carrier's insured is under-insured or non-insured, it shall not bar the right of the third-party claimant to assert a claim for the repairing the motor vehicle or to assert a claim for diminution in fair market value which the insured is legally entitled to recover from the owner or operator of an uninsured – underinsured motor vehicle pursuant to Article G.S. 20-279.21.

Petition to Adopt and Amend

11 NCAC 04 .0425 DEFINITIONS

Reasons for adoption or amendment are stated prior to wording.

As used in this Section the following terms shall be construed as follows:

(1) No changes "After market part" means a part made by a nonoriginal manufacturer.

(2) No changes "Claimant" means a first-party or third-party claimant.

(3) No changes "Diminution in Fair Market Value," as that term is used in G.S. 20-279.21, means the difference in the fair market value of the vehicle immediately before the accident and after any repairs made to the vehicle as a result of the accident have been completed.

(4) Current Language Petition to adopt and amend "Disinterested appraiser"

The reason for requesting such adoption and amendment is:

(1) Consumer protection. When a claimant is looking for an appraiser in regards to a diminished value or total loss appraisal, a claimant will go online to find an appraiser. The internet is full of scam artist appraisers claiming to be certified appraisers. Many scam artist appraisers claim to be in North Carolina, yet they are not. These scam appraisers drag claims out and take the claimant's money and run. North Carolina claimants want an appraiser from North Carolina.

(2) Many nonresident appraisers may not be able to meet North Carolina's Nonresident License Requirements, they cannot physically inspect the claimant's motor vehicle in order to prepare an appraisal, and they pay no taxes to North Carolina or contribute to North Carolina's economy. The nonresident person may not be currently licensed as a resident and in good standing in that person's home state. The nonresident person's home state DOES NOT recognize a North Carolina a motor vehicle damage appraiser license on a reciprocal basis.

(3) Many insurers use third-party administrator companies outside North Carolina to act as their disinterested appraiser, whereas the third-party administrator representative lies to the claimant in trying to get the claimant to settle.

One example third-party administrator companies is Hyper Quest, a Solera company. Audatex, a Solera provides estimating software, and diminished value software services to auto insurers.

(4) North Carolina's resident appraisers are being financially harmed due to nonresident appraisal companies.

(5) "Any person" with a credit card, no matter where they are located, can go on line to NIPR's Licensing Center and get a North Carolina motor vehicle damage appraisers license.

(4) Current Language Petition to amend "Disinterested appraiser"

"Disinterested appraiser," as that term is used in G.S. 20-279.21, means a motor vehicle damage appraiser who:

- (a) Is not employed by either the claimant or the insurer;
- (b) Has no financial interest in the outcome of the appraisal; and
- (c) Did not participate in the original appraisal.

(4) Recommended Amendment with Adoptions "Disinterested Appraiser"

"Disinterested Appraiser" as that term is used in G.S. 20-279.21(d1), means an individual who is a resident of North Carolina, or a resident of a county of a bordering state, which county is contiguous with the state line of North Carolina, licensed as a motor vehicle damage appraiser pursuant to G.S. 58-33-30(h)(1) of the N.C. General Statutes, who:

- (a) Current Language** Is not employed by either the claimant or the insurer;
- (b) Recommended Adoption** Is not employed by the claimant's or the insurer's repair facility;
- (c) Recommended Amendment** Did not participate in the original or supplemental appraisal;
- (d) Recommended Adoption** Appraisal service available to both the claimant and the insurer;
- (e) Recommended Adoption** Is not a third-party administrator for the insurer;
- (f) Recommended Adoption** Does not provide vehicle valuation software to the insurer;
- (g) Recommended Amendment** Has no financial interest in the outcome of the appraisal; and
- (h) Recommended Amendment** Has freedom from 'bias and prejudice' by either the claimant or the insurer.

(5) **No changes** "First-Party Claimant" means a person that is making a claim on an insurance policy in which they are the insured party.

(6) **No changes** "Insurer" means as defined in G.S. 58-1-5(3), and includes any person authorized by the insurer to represent the insurer with respect to a claim and who is acting within the scope of the person's authority.

(7) **No changes** "Nonoriginal manufacturer" means any manufacturer other than the original manufacturer of a part.

(8) **No changes** "Part" means a component of a motor vehicle.

(9) **No changes** "Third-Party Claimant" means a person that is making a claim on an insurance policy in which they are not the insured party.

(10) Recommended Adoption "Uninsured – Underinsured Claimant"

The reason for requesting such adoption and amendment is:

(1) Many third party claimants have to make a motor vehicle damage claim with their insurer due the at-fault party not having insurance or being underinsured. They have a right to know they can make a diminished value claim with their own insurer.

"Uninsured – Underinsured Claimant" means a person that is making a claim on an insurance policy in which the insured is legally entitled of the repairing the motor vehicle and the right to recover the diminished value of the motor vehicle from the owner or operator of an uninsured – underinsured motor vehicle pursuant to Article G.S. 20-279.21.

(11) Recommended Adoption “Non-original crash repair parts.”

The reason for requesting such adoption and amendment is:

- (1) Consumers are not truly aware of this statute
- (2) Not all crash parts are equal in terms of fit, quality, performance and warranty to the original manufactured parts they replace.

(11) Recommended Adoption "Nonoriginal crash repair part" as that term is used in G.S 58-36-95, refers to sheet metal and/or plastic parts - generally components of the exterior of a motor vehicle - that are not manufactured by or for the original equipment manufacturer of the vehicle. The “non-original crash repair part” are required to be at least equal in terms of fit, quality, performance and warranty to the original manufactured parts they replace.

(12) Recommended Adoption “LIKE KIND AND QUALITY”

“LIKE KIND AND QUALITY” as that term is used in 11 NCAC 04 .0426. No insurer shall require the use of an aftermarket part in the repair of a motor vehicle unless the aftermarket part is at least equal to the original part in terms of fit, quality, performance, and warranty. Insurers specifying the use of aftermarket parts shall include in the estimate the costs of any modifications made necessary by the use of aftermarket parts.

Petition Reason to Abolish 11 NCAC 06A .1002 ETHICAL STANDARDS

Reason for to abolish

(1) The commissioner has failed to apply 58-33-130. Continuing education program for licensees.

(a) The Commissioner may adopt rules to provide for a program of continuing education requirements for the purpose of enhancing the professional competence and professional responsibility of adjusters and motor vehicle damage appraisers. The rules may include criteria for:

(6) General compliance procedures; and (7) Sanctions for noncompliance.

2. Some of these rules are derived from the North Carolina State Bar that all North Carolina lawyers must follow called the Rules of Professional Conduct. Any copy of such North Carolina State Bar ethics rule may require judicial ruling.

3. Agent Service Division staff members and others are interpreting Rules and Statutes that “unclear” and “ambiguous.” Unless the staff member holds a license to practice law in North Carolina and is a legal representative of the Department of insurance, then no staff member of the NCDOL should attempt to interpret any Rules and Statutes that “unclear” and “ambiguous,” nor make allegations citing and defining Rules and Statutes that “unclear” and “ambiguous.”

Abernathy v. Commissioners

“When construing a statutory provision, the words in the statute are to be given their natural or ordinary meaning, unless the context of the provision indicates that they should be interpreted differently. *Abernathy v. Commissioners*, 169 N.C. 631, 86 S.E. 577 (1915).” “It is only when the **language of a statute is unclear or ambiguous that a court should attempt to interpret the language** of a statute in accordance with what the court presumed the Legislature intended.” *State v. White*, 58 N.C. App. 558, 294 S.E.2d 1 (1982).

3. North Carolina Court of Appeals may find this section of rules as:

- (1) In violation of constitutional provisions, or
- (2) In excess of statutory authority or jurisdiction of the Commissioner, or
- (3) Made upon unlawful proceedings, or
- (4) Affected by other errors of law, or
- (5) Unsupported by material and substantial evidence in view of the entire record as submitted, or
- (6) Arbitrary or capricious.

4. Some of these rules are mostly redundant to 11 NCAC 04 .0423 ETHICAL STANDARDS.

5. Several rules wording are "unclear" and "ambiguous." Several are open to interpretation in two or more ways, having no supporting G.S. 58 Statute(s) cited under which the Rule(s) is adopted, nor having no presiding or subsequent definitions stated in any other 11 NCAC Rule(s) or G.S. 58 Statute(s).

(a) Every licensed motor vehicle damage appraiser, when conducting business, shall:

(1) identify himself or herself and his or her job title;

Comment: redundant to 11 NCAC 04 .0423 ETHICAL STANDARDS.

(2) when requested, provide his or her National Producer Number, and the Department's website address and phone number for verification of license status;

Comment: redundant to 11 NCAC 04 .0423 ETHICAL STANDARDS.

(3) prepare an independent appraisal of damages; and

(4) comply with all local, State, and federal laws, in the motor vehicle damage appraiser's business affairs.

Comment: This rule is unclear and ambiguous. This rule is open to interpretation in two or more ways, having no supporting G.S. 58 Statute(s) cited under which the Rule(s) is adopted, having no presiding or subsequent definitions stated in any other 11 NCAC Rule(s) or G.S. 58 Statute(s).

(b) Every licensed motor vehicle damage appraiser shall refrain from:

(1) disparaging the professional reputation of a motor vehicle damage appraiser or other persons associated with the claim;

Comment: This rule is derived from the North Carolina State Bar Rules of Professional Conduct. This rule is unclear and ambiguous. This rule is open to interpretation in two or more ways, having no supporting G.S. 58 Statute(s) cited under which the Rule(s) is adopted, having no presiding or subsequent definitions stated in any other 11 NCAC Rule(s) or G.S. 58 Statute(s).

(2) recommending the utilization of a particular motor vehicle repair service in violation of G.S. 58-33-76(a).

Comment: redundant to 11 NCAC 04 .0423 ETHICAL STANDARDS.

(3) recommending a claimant needing repairs or other services in connection with a loss to any person with whom the motor vehicle damage appraiser has a financial interest or who provides the motor vehicle damage appraiser any compensation for the referral or any resulting business;

Comment: redundant to 11 NCAC 04 .0423 ETHICAL STANDARDS.

(4) impeding the appraisal process or the settlement of a property damage claim;

Comment: This rule is unclear and ambiguous. This rule is open to interpretation in two or more ways, having no supporting G.S. 58 Statute(s) cited under which the Rule(s) is adopted, having no presiding or subsequent definitions stated in any other 11 NCAC Rule(s) or G.S. 58 Statute(s). This rule requires judicial ruling.

(5) receiving any gratuity or other consideration in violation of G.S. 58-33-76(b).

Comment: redundant to 11 NCAC 04 .0423 ETHICAL STANDARDS.

(6) advising or recommending a claimant to obtain or not obtain legal advice or counsel from a particular legal counsel;

Comment: redundant to 11 NCAC 04 .0423 ETHICAL STANDARDS.

(7) giving legal advice on property damage claims in violation of G.S. 84-4;

Comment: NCGS 84-4 exceeds NCDOL "authority and jurisdiction." This rule is unclear and ambiguous. G.S. 58 Statute(s) does not cite nor defines what is giving legal advice on property damage claims. G.S. 84-4 does not define what giving legal advice on property damage claims is. This rule requires judicial ruling.

(8) solicit a power of attorney from a consumer that authorizes the motor vehicle damage appraiser to sign insurance-related forms;

Comment: This rule does not Cite the law under which the rule is adopted.

(9) attempting to influence a magistrate in the selection of an umpire pursuant to G.S. 20-279.21(d1), including using influence through a client or claimant;

Comment: This rule is derived from the North Carolina State Bar Rules of Professional Conduct. G.S. 20-279.21(d1), nor any parts of G.S. 58-33, does not have wording to support this rule.

(10) engaging in the salvage of automobiles if the salvage is obtained as a result of appraisal services rendered by the motor vehicle damage appraiser; and

Comment: GS 58-33-10(14) states that a motor vehicle damage appraiser method of payment for appraising a damage vehicle is made by: "salary, fee, commission, or other compensation of any nature," This rule calls for judicial ruling.

(11) act in any manner outside the scope of a motor vehicle damage appraiser, as set forth in Chapter 58, Article 33 of the General Statutes.

Comment: This rule is unclear and ambiguous. This rule is open to interpretation in two or more ways, having no supporting G.S. 58 Statute(s) cited under which the Rule(s) is adopted, having no presiding or subsequent definitions stated in any other 11 NCAC Rule(s) or G.S. 58 Statute(s). This rule may require judicial ruling.