

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 06-0345.01 Thomas Morris

HOUSE BILL 06-1006

HOUSE SPONSORSHIP

Butcher,

SENATE SPONSORSHIP

(None),

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING REFERRAL BY AN INSURANCE COMPANY OF AN INSURED
102 TO A PERSONAL PROPERTY REPAIR BUSINESS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Regulates the referral by an insurance company of an insured under a policy of personal property insurance to a property repair business.

1 *Be it enacted by the General Assembly of the State of Colorado:*

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 **SECTION 1.** Part 1 of article 4 of title 10, Colorado Revised
2 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
3 read:

4 **10-4-120. Unfair or discriminating trade practices - legislative**
5 **declaration.** (1) (a) THE GENERAL ASSEMBLY DETERMINES THAT
6 COMPETITION IS FUNDAMENTAL TO THE FREE MARKET SYSTEM AND THAT
7 THE UNRESTRAINED INTERACTION OF COMPETITIVE FORCES WILL YIELD
8 THE BEST ALLOCATION OF OUR ECONOMIC RESOURCES, THE LOWEST
9 PRICES, THE HIGHEST-QUALITY COMMODITIES AND SERVICES, AND THE
10 BEST ENVIRONMENT FOR DEMOCRATIC AND SOCIAL INSTITUTIONS.
11 THEREFORE, THE RIGHT OF THE INDIVIDUAL TO CHOOSE A REPAIR BUSINESS
12 IS A MATTER OF STATEWIDE CONCERN.

13 (b) THE GENERAL ASSEMBLY DECLARES THAT THE PURPOSES OF
14 THIS SECTION ARE:

15 (I) TO SAFEGUARD THE PUBLIC AGAINST MONOPOLIES, TRUSTS,
16 AND MARKET BARRIERS AND TO FOSTER AND ENCOURAGE COMPETITION BY
17 PROHIBITING UNFAIR AND DISCRIMINATORY INSURANCE PRACTICES THAT
18 IMPEDE FAIR AND HONEST COMPETITION;

19 (II) TO ENSURE THAT ALL CONSUMERS BENEFIT FROM
20 COMPETITION AND THE EXPANSION OF CHOICES IN THE MARKETPLACE; AND

21 (III) TO ENHANCE COLORADO'S ECONOMIC DEVELOPMENT.

22 (c) THIS SECTION SHALL BE LIBERALLY CONSTRUED SO THAT ITS
23 BENEFICIAL PURPOSES MAY BE SERVED.

24 (2) AN INSURER OR ITS AGENT THAT ISSUES OR RENEWS A POLICY
25 THAT INSURES PERSONAL PROPERTY SHALL NOT:

26 (a) DIRECTLY OR INDIRECTLY REQUIRE THAT APPRAISALS OR
27 REPAIRS TO PERSONAL PROPERTY BE MADE OR NOT BE MADE BY A

1 SPECIFIED REPAIR BUSINESS;

2 (b) REPRESENT TO A BENEFICIARY OR CLAIMANT WHO IS MAKING
3 A CLAIM UNDER A POLICY THAT THE USE OF, OR THE FAILURE TO USE, A
4 PARTICULAR REPAIR BUSINESS MAY RESULT IN THE NONPAYMENT OR
5 DELAYED PAYMENT OF A CLAIM;

6 (c) INTIMIDATE, COERCE, THREATEN, OR INDUCE BY INCENTIVE A
7 BENEFICIARY OR CLAIMANT TO USE A PARTICULAR REPAIR BUSINESS FOR
8 REPAIRS; EXCEPT THAT AN INDUCEMENT BY INCENTIVE DOES NOT INCLUDE
9 WARRANTY OR GUARANTY REPAIRS OR PROVIDING A BENEFICIARY OR
10 CLAIMANT WITH A LIST OF THE REPAIR BUSINESSES THAT ARE LOCATED
11 NEAR THE BENEFICIARY OR CLAIMANT OR THAT MEET OR EXCEED
12 INDUSTRY STANDARDS OF QUALITY, SERVICE, OR SAFETY;

13 (d) CONTRACT WITH A PERSON TO MANAGE, HANDLE, OR ARRANGE
14 INSURANCE REPAIR WORK OR TO ACT AS AN AGENT FOR THE INSURER IF:

15 (I) THE CONTRACT REQUIRES A PARTICULAR REPAIR BUSINESS TO
16 DO CLAIMS WORK FOR THE INSURER AT A PRICE ESTABLISHED BY THE
17 INSURER; AND

18 (II) THE PERSON RETAINS A PERCENTAGE OF ANY COMPENSATION
19 PAID BY THE INSURER;

20 (e) USE DISINCENTIVES TO DISCOURAGE A BENEFICIARY OR
21 CLAIMANT FROM USING A PARTICULAR REPAIR BUSINESS; EXCEPT THAT A
22 DISINCENTIVE DOES NOT INCLUDE WARRANTY OR GUARANTY REPAIRS OR
23 PROVIDING A BENEFICIARY OR CLAIMANT WITH A LIST OF THE REPAIR
24 BUSINESSES THAT ARE LOCATED NEAR THE BENEFICIARY OR CLAIMANT OR
25 THAT MEET OR EXCEED INDUSTRY STANDARDS OF QUALITY, SERVICE, OR
26 SAFETY;

27 (f) SOLICIT OR ACCEPT A REFERRAL FEE OR COMPENSATION IN

1 EXCHANGE FOR REFERRING THE BENEFICIARY OR CLAIMANT TO A REPAIR
2 FACILITY;

3 (g) REQUIRE THE BENEFICIARY OR CLAIMANT TO TRAVEL AN
4 UNREASONABLE DISTANCE TO CHOOSE A REPAIR FACILITY;

5 (h) MISINFORM A BENEFICIARY OR CLAIMANT TO INDUCE THE USE
6 OF A PARTICULAR REPAIR BUSINESS; OR

7 (i) IN THE SETTLEMENT OF A LIABILITY CLAIM BY A THIRD PARTY
8 AGAINST A BENEFICIARY OR CLAIMANT FOR PERSONAL PROPERTY DAMAGE
9 CLAIMED BY THE THIRD PARTY, REQUIRE A THIRD-PARTY CLAIMANT TO
10 HAVE REPAIRS DONE BY A PARTICULAR REPAIR BUSINESS.

11 (3) AN INSURER OR ITS AGENT THAT ISSUES OR RENEWS A POLICY
12 THAT INSURES PERSONAL PROPERTY SHALL:

13 (a) SUPPLY THE BENEFICIARY OR CLAIMANT WITH A COPY OF THE
14 ESTIMATE UPON WHICH THE SETTLEMENT IS BASED, WHEN PARTIAL LOSSES
15 ARE SETTLED ON THE BASIS OF AN ESTIMATE PREPARED FOR OR BY THE
16 INSURER;

17 (b) REQUIRE THAT ANY ESTIMATE PREPARED BY OR FOR THE
18 INSURER COVERING DAMAGES THAT ARE VISIBLE OR EVIDENT AT THE TIME
19 OF INSPECTION IS ADEQUATE TO RESTORE THE PERSONAL PROPERTY
20 WITHIN A REASONABLE TIME TO ITS CONDITION BEFORE THE LOSS, IN
21 ACCORDANCE WITH APPLICABLE POLICY PROVISIONS;

22 (c) PAY FOR REPAIR SERVICES AND PRODUCTS BASED ON A
23 PREVAILING COMPETITIVE PRICE, AS ESTABLISHED BY COMPETITIVE BIDS,
24 GENERALLY ACCEPTED INSURER-BASED METHODOLOGY, OR MARKET
25 SURVEYS THAT DETERMINE A FAIR AND REASONABLE MARKET PRICE FOR
26 SIMILAR SERVICES;

27 (d) ORALLY OR IN WRITING DISCLOSE TO A BENEFICIARY OR

1 CLAIMANT THAT THE BENEFICIARY OR CLAIMANT MAY FREELY CHOOSE
2 ANY REPAIR BUSINESS;

3 (e) ASSUME ALL REASONABLE COSTS SUFFICIENT TO PAY FOR THE
4 BENEFICIARY'S OR CLAIMANT'S REPAIRS INCLUDING MATERIALS OR PARTS,
5 LESS ANY APPLICABLE DEDUCTIBLE OR REDUCTION FOR COMPARATIVE
6 NEGLIGENCE;

7 (f) PROVIDE ORAL OR WRITTEN NOTICE OF THE PROVISIONS OF THIS
8 SECTION TO THE BENEFICIARY OR CLAIMANT WITHIN THREE BUSINESS
9 DAYS AFTER A CLAIM IS MADE;

10 (g) PROMPTLY PAY THE COST OF PERSONAL PROPERTY REPAIR
11 SERVICES AND PRODUCTS FROM ANY REPAIR FACILITY LOCATION THAT IS
12 WITHIN A REASONABLE DISTANCE, LESS ANY APPLICABLE DEDUCTIBLE
13 AMOUNT PAYABLE BY THE BENEFICIARY OR CLAIMANT ACCORDING TO THE
14 TERMS OF THE INSURANCE POLICY, AT NO LESS THAN THE PREVAILING
15 COMPETITIVE MARKET PRICE IN THE SAME GEOGRAPHIC AREA; AND

16 (h) DISCLOSE TO THE BENEFICIARY OR CLAIMANT ANY OWNERSHIP
17 INTEREST IN, OR OWNERSHIP BY OR THROUGH AN AFFILIATION WITH, A
18 REPAIR BUSINESS RECOMMENDED BY THE INSURER WHEN THE
19 RECOMMENDATION IS MADE.

20 (4) AN INSURER IS NOT REQUIRED TO FURNISH THE NOTICES
21 REQUIRED BY THIS SECTION MORE THAN ONCE TO EACH BENEFICIARY OR
22 CLAIMANT FOR EACH CLAIM.

23 (5) A BENEFICIARY, CLAIMANT, OR REPAIR BUSINESS MAY SUBMIT
24 A WRITTEN, DOCUMENTED COMPLAINT TO THE COMMISSIONER ALLEGING
25 A VIOLATION OF THIS SECTION.

26 **SECTION 2. Repeal.** 10-4-618, Colorado Revised Statutes, is
27 repealed as follows:

1 **10-4-618. Unfair or discriminatory trade practices - legislative**
2 **declaration.** ~~(1)(a) The general assembly determines that competition~~
3 ~~is fundamental to the free market system and that the unrestrained~~
4 ~~interaction of competitive forces will yield the best allocation of our~~
5 ~~economic resources, the lowest prices, the highest quality commodities~~
6 ~~and services, and the best environment for democratic and social~~
7 ~~institutions. Therefore, the right of the individual to choose a repair~~
8 ~~business is a matter of statewide concern.~~

9 ~~(b) The general assembly declares that the purpose of this section~~
10 ~~is:~~

11 ~~(I) To safeguard the public against monopolies, trusts, and market~~
12 ~~barriers and to foster and encourage competition by prohibiting unfair and~~
13 ~~discriminatory insurance practices that impede fair and honest~~
14 ~~competition;~~

15 ~~(II) To ensure that all consumers benefit from such competition~~
16 ~~and expansion; and~~

17 ~~(III) To enhance Colorado's economic development.~~

18 ~~(c) This section shall be liberally construed so that its beneficial~~
19 ~~purposes may be subserved.~~

20 ~~(2) An insurer or its agent that issues or renews a policy shall not:~~

21 ~~(a) Directly or indirectly require that appraisals or repairs to motor~~
22 ~~vehicles be made or not be made by a specified repair business;~~

23 ~~(b) Represent to a beneficiary or claimant who is making a claim~~
24 ~~under a policy that the use of or the failure to use a particular repair~~
25 ~~business may result in the nonpayment or delayed payment of a claim;~~

26 ~~(c) Intimidate, coerce, threaten, or induce by incentive a~~
27 ~~beneficiary or claimant to use a particular repair business for repairs;~~

1 ~~except that an inducement by incentive does not include warranty or~~
2 ~~guaranty repairs or providing a beneficiary or claimant with a list of the~~
3 ~~repair businesses that are located close to the beneficiary or claimant or~~
4 ~~that meet or exceed industry standards of quality, service, or safety;~~

5 ~~(d) Contract with a person to manage, handle, or arrange~~
6 ~~insurance repair work or to act as an agent for the insurer on the condition~~
7 ~~that a repair business does claims work for the insurer at a price~~
8 ~~established by the insurer and if such person retains a percentage of any~~
9 ~~compensation paid by the insurer;~~

10 ~~(e) Use disincentives to discourage a beneficiary or claimant from~~
11 ~~using a repair business; except that a disincentive does not include~~
12 ~~warranty or guaranty repairs or providing a beneficiary or claimant with~~
13 ~~a list of the repair businesses that are located close to the beneficiary or~~
14 ~~claimant or that meet or exceed industry standards of quality, service, or~~
15 ~~safety;~~

16 ~~(f) Solicit or accept a referral fee or compensation in exchange for~~
17 ~~referring the beneficiary or claimant to a repair facility;~~

18 ~~(g) Require the beneficiary or claimant to travel an unreasonable~~
19 ~~distance to choose a repair facility;~~

20 ~~(h) Misinform a beneficiary or claimant to induce the use of a~~
21 ~~particular repair business;~~

22 ~~(i) In the settlement of a liability claim by a third party against a~~
23 ~~beneficiary or claimant for property damage claimed by the third party,~~
24 ~~require a third-party claimant to have repairs done by a particular repair~~
25 ~~business.~~

26 ~~(3) An insurer or its agent that issues or renews a policy shall:~~

27 ~~(a) Supply the beneficiary or claimant with a copy of the estimate~~

1 upon which the settlement is based when partial losses are settled on the
2 basis of such estimate prepared for or by the insurer;

3 (b) ~~Require that any estimate prepared by or for the insurer~~
4 ~~covering damages that are visible or evident at the time of inspection is~~
5 ~~adequate to restore the motor vehicle within a reasonable time to its~~
6 ~~condition before the loss, in accordance with applicable policy provisions;~~

7 (c) ~~Pay for repair services and products based on a prevailing~~
8 ~~competitive price, as established by competitive bids, generally accepted~~
9 ~~insurer-based methodology, or market surveys that determine a fair and~~
10 ~~reasonable market price for similar services;~~

11 (d) ~~Orally or in writing disclose to a beneficiary or claimant that~~
12 ~~the beneficiary or claimant may freely choose any repair business;~~

13 (e) ~~Assume all reasonable costs sufficient to pay for the~~
14 ~~beneficiary's or claimant's repairs including parts, less any applicable~~
15 ~~deductible or reduction for comparative negligence;~~

16 (f) ~~Provide oral or written notice of the provisions of this section~~
17 ~~to the beneficiary or claimant within three business days after a claim is~~
18 ~~made;~~

19 (g) ~~Promptly pay the cost of motor vehicle repair services and~~
20 ~~products from any motor vehicle repair facility location that is within a~~
21 ~~reasonable distance, less any applicable deductible amount payable by the~~
22 ~~beneficiary or claimant according to the terms of the insurance policy at~~
23 ~~no less than the prevailing competitive market price in the same~~
24 ~~geographic area;~~

25 (h) ~~Disclose to the beneficiary or claimant any ownership interest~~
26 ~~in or ownership by or through an affiliation with a repair business~~
27 ~~recommended by the insurer when the recommendation is made.~~

1 ~~(4) An insurer is not required to furnish the notices required by~~
2 ~~this section more than once to each beneficiary or claimant for each~~
3 ~~claim.~~

4 ~~(5) A beneficiary, claimant, or repair business may submit a~~
5 ~~written, documented complaint to the commissioner alleging a violation~~
6 ~~of this section.~~

7 **SECTION 3. Repeal.** 10-4-601 (1) and (12), Colorado Revised
8 Statutes, are repealed as follows:

9 **10-4-601. Definitions.** As used in this part 6, unless the context
10 otherwise requires:

11 ~~(1) "Beneficiary or claimant" includes an insured person and a~~
12 ~~third-party claimant.~~

13 ~~(12) "Repair business" means a business that repairs motor~~
14 ~~vehicles.~~

15 **SECTION 4. Applicability.** This act shall apply to claims made
16 on or after the effective date of this act.

17 **SECTION 5. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.