

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 06-1006

BY REPRESENTATIVE(S) Butcher, Carroll M., Coleman, Vigil, Gallegos, Liston, and Marshall;
also SENATOR(S) Tapia, and Tochtrop.

CONCERNING REFERRAL BY AN INSURANCE COMPANY OF AN INSURED TO A PERSONAL PROPERTY REPAIR BUSINESS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

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

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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

(III) TO ENHANCE COLORADO'S ECONOMIC DEVELOPMENT.

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

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

(a) DIRECTLY OR INDIRECTLY REQUIRE THAT APPRAISALS OR REPAIRS TO PERSONAL PROPERTY BE MADE OR NOT BE MADE BY A SPECIFIED REPAIR BUSINESS;

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

(c) INTIMIDATE, COERCE, THREATEN, OR INDUCE BY INCENTIVE A BENEFICIARY OR CLAIMANT TO USE A PARTICULAR REPAIR BUSINESS FOR REPAIRS; EXCEPT THAT AN INDUCEMENT BY INCENTIVE DOES NOT INCLUDE WARRANTY OR GUARANTY REPAIRS;

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

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

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

(e) USE DISINCENTIVES TO DISCOURAGE A BENEFICIARY OR CLAIMANT FROM USING A PARTICULAR REPAIR BUSINESS; EXCEPT THAT A DISINCENTIVE DOES NOT INCLUDE WARRANTY OR GUARANTY REPAIRS;

(f) SOLICIT OR ACCEPT A REFERRAL FEE OR COMPENSATION IN EXCHANGE FOR REFERRING THE BENEFICIARY OR CLAIMANT TO A REPAIR FACILITY;

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

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

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

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

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

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

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

SIMILAR SERVICES;

(d) ORALLY OR IN WRITING DISCLOSE TO A BENEFICIARY OR CLAIMANT THAT THE BENEFICIARY OR CLAIMANT MAY FREELY CHOOSE ANY REPAIR BUSINESS;

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

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

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

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

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

(6) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, AN INSURER OR ITS AGENT MAY PROVIDE A LIST OF REPAIR BUSINESSES TO A BENEFICIARY OR CLAIMANT UPON REQUEST BY THE BENEFICIARY OR CLAIMANT.

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

10-4-618. Unfair or discriminatory trade practices - legislative

declaration. ~~(1) (a) The general assembly determines that competition is fundamental to the free market system and that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality commodities and services, and the best environment for democratic and social institutions. Therefore, the right of the individual to choose a repair business is a matter of statewide concern.~~

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

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

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

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

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

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

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

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

~~(c) Intimidate, coerce, threaten, or induce by incentive a beneficiary or claimant to use a particular repair business for repairs; except that an inducement by incentive does not include warranty or guaranty repairs or providing a beneficiary or claimant with a list of the repair businesses that are located close to the beneficiary or claimant or that meet or exceed industry standards of quality, service, or safety;~~

~~(d) Contract with a person to manage, handle, or arrange insurance repair work or to act as an agent for the insurer on the condition that a repair~~

~~business does claims work for the insurer at a price established by the insurer and if such person retains a percentage of any compensation paid by the insurer;~~

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

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

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

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

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

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

~~(a) Supply the beneficiary or claimant with a copy of the estimate upon which the settlement is based when partial losses are settled on the basis of such estimate prepared for or by the insurer;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. Appropriation. In addition to any other

appropriation, there is hereby appropriated, out of any moneys in the division of insurance cash fund created in section 10-1-103 (3), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of insurance, for regulation of a referral from an insurance company to a property repair business, for the fiscal year beginning July 1, 2006, the sum of nine thousand five hundred eighty-two dollars (\$9,582), or so much thereof as may be necessary, for the implementation of this act.

SECTION 5. Applicability. This act shall apply to claims made on or after the effective date of this act.

SECTION 6. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Joan Fitz-Gerald
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO