

**Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 06-0345.01 Thomas Morris

HOUSE BILL 06-1006

HOUSE SPONSORSHIP

Butcher,

SENATE SPONSORSHIP

Tapia,

House Committees

Business Affairs and Labor
Appropriations

Senate Committees

Business, Labor and Technology
Appropriations

A BILL FOR AN ACT

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

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.

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.

SENATE
Amended 2nd Reading
May 1, 2006

HOUSE
3rd Reading Unamended
March 27, 2006

HOUSE
Amended 2nd Reading
March 24, 2006

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

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

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

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

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

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

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

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

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

27 (a) DIRECTLY OR INDIRECTLY REQUIRE THAT APPRAISALS OR

1 REPAIRS TO PERSONAL PROPERTY BE MADE OR NOT BE MADE BY A
2 SPECIFIED REPAIR BUSINESS;

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

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

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

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

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

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

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

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

27 (h) MISINFORM A BENEFICIARY OR CLAIMANT TO INDUCE THE USE

1 OF A PARTICULAR REPAIR BUSINESS; OR

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

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

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

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

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

22 (d) ORALLY OR IN WRITING DISCLOSE TO A BENEFICIARY OR
23 CLAIMANT THAT THE BENEFICIARY OR CLAIMANT MAY FREELY CHOOSE
24 ANY QUALIFIED AND INSURED REPAIR BUSINESS;

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

1 NEGLIGENCE;

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

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

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

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

19 (6) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
20 AN INSURER OR ITS AGENT MAY RECOMMEND A REPAIR BUSINESS TO A
21 BENEFICIARY OR CLAIMANT THAT IS LOCATED NEAR THE BENEFICIARY OR
22 CLAIMANT OR THAT MEETS OR EXCEEDS INDUSTRY STANDARDS OF
23 QUALITY, SERVICE, OR SAFETY.

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

26 **10-4-618. Unfair or discriminatory trade practices - legislative**
27 **declaration.** ~~(1)(a) The general assembly determines that competition~~

1 is fundamental to the free market system and that the unrestrained
2 interaction of competitive forces will yield the best allocation of our
3 economic resources, the lowest prices, the highest quality commodities
4 and services, and the best environment for democratic and social
5 institutions. Therefore, the right of the individual to choose a repair
6 business is a matter of statewide concern.

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

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

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

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

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

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

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

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

24 (c) Intimidate, coerce, threaten, or induce by incentive a
25 beneficiary or claimant to use a particular repair business for repairs;
26 except that an inducement by incentive does not include warranty or
27 guaranty repairs or providing a beneficiary or claimant with a list of the

1 repair businesses that are located close to the beneficiary or claimant or
2 that meet or exceed industry standards of quality, service, or safety;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 claim.

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

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

7 **10-4-601. Definitions.** As used in this part 6, unless the context
8 otherwise requires:

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

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

13 **SECTION 4. Appropriation.** In addition to any other
14 appropriation, there is hereby appropriated, out of any moneys in the
15 division of insurance cash fund created in section 10-1-103 (3), Colorado
16 Revised Statutes, not otherwise appropriated, to the department of
17 regulatory agencies, for allocation to the division of insurance, for
18 regulation of a referral from an insurance company to a property repair
19 business, for the fiscal year beginning July 1, 2006, the sum of nine
20 thousand five hundred eighty-two dollars (\$9,582), or so much thereof as
21 may be necessary, for the implementation of this act.

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

24 **SECTION 6. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, and safety.