

An Act

HOUSE BILL 07-1104

BY REPRESENTATIVE(S) Butcher, Carroll M., Green, Jahn, Marshall, Merrifield, and Solano;
also SENATOR(S) Tapia.

CONCERNING REFERRAL BY AN INSURANCE COMPANY OF AN INSURED TO A PROPERTY REPAIR BUSINESS, AND MAKING AN APPROPRIATION THEREFOR.

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.

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

(I) SAFEGUARD THE PUBLIC AGAINST MONOPOLIES, TRUSTS, AND MARKET BARRIERS;

(II) FOSTER AND ENCOURAGE COMPETITION BY PROHIBITING UNFAIR AND DISCRIMINATORY INSURANCE PRACTICES THAT IMPEDE FAIR AND HONEST COMPETITION;

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

(IV) 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 REAL OR PERSONAL PROPERTY SHALL NOT:

(a) DIRECTLY OR INDIRECTLY REQUIRE THAT APPRAISALS OR REPAIRS TO THE 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 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 REAL OR 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 BY OR FOR 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 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 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 SHALL INFORM THE BENEFICIARY OR CLAIMANT THAT HE OR SHE MAY SELECT ANY REPAIR BUSINESS OF HIS OR HER CHOOSING, AND IF THE INSURER CHOOSES, THE INSURER MAY ALSO INFORM THE BENEFICIARY OR CLAIMANT THAT THE INSURER CAN PROVIDE A LIST OF REPAIR BUSINESSES FOR THE BENEFICIARY OR CLAIMANT TO CONSIDER.

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 Repeal. 10-4-618, Colorado Revised Statutes, is repealed.

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:~~

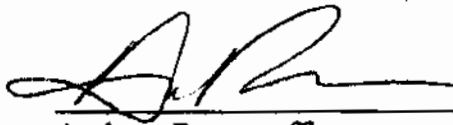
(12) ~~"Repair business" means a business that repairs motor vehicles:~~


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 insurance division, for the fiscal year beginning July 1, 2007, the sum of ten thousand two hundred one dollars (\$10,201), or so much thereof as may be necessary, for the implementation of this act.

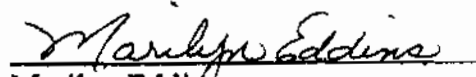
SECTION 5. Applicability. This act shall apply to claims made on or after the effective date of this act.

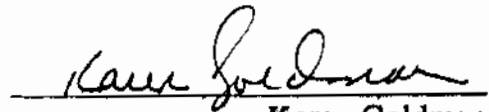
SECTION 6. Safety clause. The general assembly hereby finds,

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 May 18, 2007 at 3:12pm.


Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO

Colorado Legislative Council Staff Fiscal Note

**STATE
FISCAL IMPACT**

Drafting Number: LLS 07-0333
Prime Sponsor(s): Rep. Butcher

Date: January 18, 2007
Bill Status: House Business Affairs and Labor
Fiscal Analyst: Gary J. Estenson (303-866-4976)

TITLE: CONCERNING REFERRAL BY AN INSURANCE COMPANY OF AN INSURED TO A PROPERTY REPAIR BUSINESS.

Fiscal Impact Summary	FY 2007-2008	FY 2008-2009
State Revenue	\$0	\$0
State Expenditures		
General Fund	(\$10,201)	(\$10,201)
Cash Funds - Division of Insurance Cash Fund	10,201	10,201
FTE Position Change	0.0 FTE	0.0 FTE
Effective Date: Upon signature of the Governor		
Appropriation Summary for FY 2007-2008: See State Appropriations section.		
Local Government Impact: None.		

Summary of Legislation

This bill prohibits certain types of business practices by a property and casualty insurer. These prohibitions include: requiring that appraisals or repairs be made by a specified repair business, representing to a claimant that the failure to use a particular repair business may result in nonpayment, and soliciting a referral fee in exchange for referring claimants to a repair business. The bill also requires property and casualty insurers to do the following:

- provide the claimant with a copy of the estimate upon which a settlement is based;
- require that any estimate prepared by or for the insurer is adequate to restore the property to its condition before the loss;
- pay for repair services and products based on the prevailing competitive price;
- disclose to claimants that they may freely choose any repair business;
- assume all reasonable costs sufficient to pay for the claimant's repairs;
- provide notice of what constitutes an unfair or discriminatory trade practice when a claim is made;
- promptly pay the cost of repairs less the deductible according to the terms of the insurance policy; and
- disclose any ownership interest in or affiliation with a recommended repair business.

The bill further specifies that written complaints may be submitted to the Commissioner of Insurance regarding violations of these provisions. Currently, these provisions apply to auto insurance only.

State Revenue

General Fund revenue is anticipated to decrease \$10,201 in FY 2007-08 and FY 2008-09. The Department of Regulatory Agencies, Division of Insurance, is funded from a diversion of premium tax revenue that would otherwise be credited to the General Fund. Since this bill requires increased expenditures from the Division of Insurance Cash Fund, a corresponding negative General Fund Revenue impact is expected.

General Fund for Highways and Capital Construction. Based on the December 2006 Legislative Council Staff revenue forecast, money is available to be transferred to the Highway Users Tax Fund (HUTF) and Capital Construction Fund through the mechanism passed in HB 02-1310 each year through at least FY 2010-11. This bill reduces General Fund revenue, thereby reducing the amount available for these transfers by \$6,800 for the HUTF and \$3,400 for the Capital Construction Fund.

State Expenditures

This bill will increase state expenditures of the Department of Regulatory Agencies, Division of Insurance, by an estimated \$10,201 cash funds in FY 2007-08 and FY 2008-09. While the division currently responds to complaints from policy holders regarding claim settlements and authorized repair facilities, this bill specifically authorizes repair businesses to submit complaints to the Insurance Commissioner. An additional 90 written complaints are anticipated primarily from repair vendors and public adjusters for homeowner's insurance claims. Complaints take an average of 4 hours each to resolve, resulting in additional expenditures of 360 hours of Rate Analyst II time ($4 \times 90 = 360$). In out years, once insurers become familiar with the provisions of this bill and revise their practices, the number of complaints is expected to decrease.

Note: The division anticipated an increase of 200 complaints per year based on its general knowledge and experience. The fiscal note anticipates 90 additional complaints based on the three-year average of 90 complaints per year from homeowner's insureds regarding settlement offers and disputed values, and the expansion to allow all types of repair facilities to submit written complaints. The actual number of additional complaints will depend on numerous factors including insurance company compliance and public awareness of the bill's provisions.