

**First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

REVISED

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

LLS NO. 07-0333.01 Thomas Morris

HOUSE BILL 07-1104

HOUSE SPONSORSHIP

Butcher,

SENATE SPONSORSHIP

Tapia,

House Committees

Business Affairs and Labor
Finance
Appropriations

Senate Committees

Finance
Appropriations

A BILL FOR AN ACT

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

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 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.

SENATE
2nd Reading Unamended
April 24, 2007

HOUSE
3rd Reading Unamended
February 28, 2007

HOUSE
Amended 2nd Reading
February 26, 2007

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 TO:

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

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

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

22 (IV) 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 REAL OR PERSONAL PROPERTY SHALL NOT:

27 (a) DIRECTLY OR INDIRECTLY REQUIRE THAT APPRAISALS OR

1 REPAIRS TO THE PROPERTY BE MADE OR NOT BE MADE BY A SPECIFIED
2 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (6) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
18 AN INSURER OR ITS AGENT SHALL INFORM THE BENEFICIARY OR CLAIMANT
19 THAT HE OR SHE MAY SELECT ANY REPAIR BUSINESS OF HIS OR HER
20 CHOOSING, AND IF THE INSURER CHOOSES, THE INSURER MAY ALSO INFORM
21 THE BENEFICIARY OR CLAIMANT THAT THE INSURER CAN PROVIDE A LIST
22 OF REPAIR BUSINESSES FOR THE BENEFICIARY OR CLAIMANT TO CONSIDER.

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

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

27 **10-4-601. Definitions.** As used in this part 6, unless the context

1 otherwise requires:

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

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

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

8 **SECTION 5. Appropriation.** In addition to any other
9 appropriation, there is hereby appropriated, out of any moneys in the
10 division of insurance cash fund created in section 10-1-103 (3), Colorado
11 Revised Statutes, not otherwise appropriated, to the department of
12 regulatory agencies, for allocation to the insurance division, for the fiscal
13 year beginning July 1, 2007, the sum of ten thousand two hundred one
14 dollars (\$10,201), or so much thereof as may be necessary, for the
15 implementation of this act.

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