

CHAPTER 390

INSURANCE

HOUSE BILL 03-1253

BY REPRESENTATIVE(S) Stengel, Briggs, Coleman, Larson, Ragsdale, Stafford, Carroll, Frangas, Hoppe, Marshall, McFadyen, Merrifield, Miller, Paccione, Pommer, Romanoff, Sanchez, Spence, Spradley, Tochtrop, Veiga, Weddig, and Wiens; also SENATOR(S) Kester, Grossman, Nichol, Takis, and Tapia.

AN ACT

CONCERNING THE PREVENTION OF DISCRIMINATORY TRADE PRACTICES IN THE PAYMENT OF MOTOR VEHICLE INSURANCE CLAIMS FOR THE REPAIR OF DAMAGED MOTOR VEHICLES.

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

SECTION 1. 10-4-601 (1), Colorado Revised Statutes, is amended, and the said 10-4-601 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

(1) ~~"Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on the policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.~~ "BENEFICIARY OR CLAIMANT" INCLUDES AN INSURED PERSON AND A THIRD-PARTY CLAIMANT.

(1.5) "NONPAYMENT OF PREMIUM" MEANS FAILURE OF THE NAMED INSURED TO DISCHARGE WHEN DUE ANY OF HIS OR HER OBLIGATIONS IN CONNECTION WITH THE PAYMENT OF PREMIUMS ON THE POLICY, OR ANY INSTALLMENT OF SUCH PREMIUM, WHETHER THE PREMIUM IS PAYABLE DIRECTLY TO THE INSURER OR ITS AGENT OR INDIRECTLY UNDER ANY PREMIUM FINANCE PLAN OR EXTENSION OF CREDIT.

(3.5) "REPAIR BUSINESS" MEANS A BUSINESS THAT REPAIRS MOTOR VEHICLES.

SECTION 2. Part 6 of article 4 of title 10, Colorado Revised Statutes, is amended

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

BY THE ADDITION OF A NEW SECTION to read:

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. Effective date - applicability. This act shall take effect July 1, 2003, and shall apply to acts committed on or after said date.

SECTION 4. 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.

Approved: June 5, 2003