

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1191
By: Harris
Economic Development
4/15/1999
Committee Report (Substituted)

DIGEST

Currently, Article 5.07-1, Insurance Code, is intended to provide Texans freedom of choice under auto insurance policies when repairing damage to their vehicles. The Texas Department of Insurance is authorized to promulgate rules regarding notice of the article and fraudulent activities. In spite of these protections, the steering of business by insurance companies to “preferred” repair shops still occurs. This bill would clarify the freedom of choice requirements in the repair of autos covered by insurance policies.

PURPOSE

As proposed, C.S.S.B. 1191 clarifies the freedom of choice requirements in the repair of autos covered by insurance policies.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 5.07-1, Insurance Code, to prohibit a person subject to this article, rather than an insurer, from specifying on any damage report, estimate, or appraisal, the brand, type, kind, age, vendor, supplier, or condition of the parts or products that may be used to repair the motor vehicle, requiring the use of any part or product in the repair of the motor vehicle, or requiring any repair person or facility to specify on any damage report, estimate, or appraisal the brand, type, kind, age, vendor, supplier, or condition of the parts or products that may be used to repair the motor vehicle. Prohibits a person subject to this article from directly or indirectly limiting the beneficiary of the policy or a third-party claimant from selecting a repair person or facility to repair damage to the motor vehicle covered under an auto insurance policy that is delivered, issued for delivery, or renewed in this state. Prohibits a person subject to this article from soliciting or accepting any form of compensation in exchange for referring a beneficiary of a policy or third-party claimant to one or more repair persons or facilities to repair the damage; from communicating to a beneficiary or a third-party claimant that, for the damage repair or parts replacement to be covered by the policy, a beneficiary or a third-party claimant is required to use, one or more repair persons or facilities; from communicating to a beneficiary or a third-party claimant that one or more repair persons or facilities identified on a list of repair persons and facilities maintained by or compiled by a person subject to this article is preferred or recommended; from restricting a beneficiary or third-party claimant’s right to choose a repair person or facility by threatening to remove the beneficiary’s or claimant’s motor vehicle from a repair person or facility selected by the beneficiary or claimant for any reason; from communicating to a beneficiary or third-party claimant that repairs, including parts, materials, or labor, are guaranteed by a person other than the repair person or facility that performs the damage repairs; from communicating to a beneficiary or third-party claimant that alternative direct billed transportation coverage is allowed following the filing of a claim only if the damaged motor vehicle is repaired by a repair person or facility selected or recommended by the insurer or an agent of the insurer; from providing any other incentive to induce the beneficiary of a policy or a third-party claimant to waive the right to select the repair person or facility to repair damage to the beneficiary’s or the claimant’s motor vehicle; or from reducing the amount paid for repairs by applying predesignated limits on the quantity of or charge for materials that are used to repair a motor vehicle. Prohibits an insurer from contracting with a repair person or facility for any purpose other than for the provision of damage reports, estimates, or appraisals. Authorizes any beneficiary, third-party claimant, consumer group, representative of a consumer, insurer, repair person, or facility to submit a written, documented complaint to the Texas Department of Insurance (TDI) with respect to an alleged violation of this article. Prohibits a person subject to this article, in the settlement of liability claims by a third party against an insured for property damage claimed by the

third party, from communicating to the third-party that in order for repairs to be covered, the claimant is required to use a specific repair person or facility; or the person prefers or recommends that the claimant use a repair person or facility identified on a list of repair persons and facilities maintained or compiled by a person subject to this article. Prohibits a person subject to this article, in the settlement of liability claims by a third party against an insured for property damage claimed by the third party, from specifying on a damage report, estimate, or appraisal the brand, type, kind, age, vendor, supplier, or condition of the parts or products that may be used to repair the motor vehicle; from requiring the use of any specific parts in the repair of a motor vehicle, or from requiring any repair person or facility to specify on any damage report, estimate, or appraisal the brand, type, kind, age, vendor, supplier, or condition of the parts or products that may be used to repair the motor vehicle. Sets forth the circumstances in which the commissioner of TDI (commissioner) is prohibited from adopting a rule that allows an insurer to specify a non-original equipment manufacturer part as the basis for a damage report, estimate, or appraisal as a limit to the cost of a repair to a part damaged in an accident. Sets forth requirements for a person subject to this article who uses or references survey data to directly or indirectly determine reasonable costs for damage repairs. Sets forth the individuals and entities this section applies to. Provides that a person commits an unfair and deceptive act or practice in the business of insurance if the person violates Subsection (b) of this article and is subject to each penalty or other sanction provided by Article 21.21 of this code for that violation. Defines “communicate” and “survey data.” Deletes text prohibiting a contract between an insurer and a repair person or facility from resulting in a reduction of coverage under the insured’s auto insurance policy. Deletes text authorizing the commissioner of TDI to exercise the rulemaking authority under Article 21.21-2 of this code with respect to any fraudulent activity of any party to an agreement described by Subsection (c). Makes conforming and nonsubstantive changes.

SECTION 2. Effective date: September 1, 1999.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Article 5.07-1, Insurance Code, to prohibit a person subject to this article, rather than an insurer, from specifying on any damage report, estimate, or appraisal, the brand, type, kind, age, vendor, supplier, or condition of the parts or products that may be used to repair the motor vehicle, requiring the use of any part or product in the repair of the motor vehicle, or requiring any repair person or facility to specify on any damage report, estimate, or appraisal the brand, type, kind, age, vendor, supplier, or condition of the parts or products that may be used to repair the motor vehicle, rather than prohibiting a person subject to this article, from limiting its coverage under an insurance policy covering damage to a motor vehicle or limiting its liability for a third-party claimant’s property repairs by recommending or requiring a particular brand, type, kind, age, vendor, supplier, or condition of the parts or products that may be used to repair the motor vehicle or a particular quantity of products and materials that may be used to repair the motor vehicle. Prohibits a person subject to this article from directly or indirectly limiting the beneficiary of the policy or a third-party claimant from selecting a repair person or facility to repair damage to the motor vehicle covered under an auto insurance policy that is delivered, issued for delivery, or renewed in this state. Prohibits a person subject to this article from soliciting or accepting a discount in exchange for referring a beneficiary or third-party claimant to a repair person or facility to repair the damage; from communicating to a beneficiary or a third-party claimant that, for the damage repair or parts replacement to be covered by the policy, a beneficiary or a third-party claimant is required to use, one or more repair persons or facilities; from communicating to a beneficiary or a third-party claimant that one or more repair persons or facilities identified on a list of repair persons and facilities maintained by or compiled by a person subject to this article is preferred or recommended; from communicating to a beneficiary or third-party claimant that repairs, including parts, materials, or labor, are guaranteed by a person other than the repair person or facility that performs the damage repairs; from communicating to a beneficiary or third-party claimant that alternative direct billed transportation coverage is allowed following the filing of a claim only if the damaged motor vehicle is repaired by a repair person or facility selected or recommended by the insurer or an agent of the insurer from providing any other incentive to induce the beneficiary of a policy or a third-party claimant to waive the right to select the repair

person or facility to repair damage to the beneficiary's or the claimant's motor vehicle; or from reducing the amount paid for repairs by applying predesignated limits on the quantity of or charge for materials that are used to repair a motor vehicle. Prohibits an insurer from contracting with a repair person or facility for any purpose other than for the provision of damage reports, estimates, or appraisals. Authorizes an insurer to submit a written, documented complaint to TDI with respect to an alleged violation of this article. Prohibits a person subject to this article, in the settlement of liability claims by a third party against an insured for property damage claimed by the third party, from communicating to the third-party that in order for repairs to be covered, the claimant is required to use a specific repair person or facility; or the person prefers or recommends that the claimant use a repair person or facility identified on a list of repair persons and facilities maintained or compiled by a person subject to this article. Prohibits a person subject to this article, in the settlement of liability claims by a third party against an insured for property damage claimed by the third party, from specifying on a damage report, estimate, or appraisal the brand, type, kind, age, vendor, supplier, or condition of the parts or products that may be used to repair the motor vehicle; from requiring the use of any specific parts in the repair of a motor vehicle, or from requiring any repair person or facility to specify on any damage report, estimate, or appraisal the brand, type, kind, age, vendor, supplier, or condition of the parts or products that may be used to repair the motor vehicle. Sets forth the circumstances in which the commissioner is prohibited from adopting a rule that allows an insurer to specify a non-original equipment manufacturer part as the basis for a damage report, estimate, or appraisal as a limit to the cost of a repair to a part damaged in an accident. Revises the requirements for a person subject to this article who uses or references survey data to directly or indirectly determine reasonable costs for damage repairs, rather than use or references survey data to influence persons engaged in collision repair, policy holders, or third-party claimants with respect to charges for labor, parts, or other items used in the repair of collision damage. Makes conforming and nonsubstantive changes.

SECTION 3.

Makes application of this Act prospective.
Redesignates proposed SECTION 3 as SECTION 4.