

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS15188-LT-89B (3/16)

Short Title: Motor Vehicle Repair Consumer Protection. (Public)

Sponsors: Senators Lucas, and Bingham.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS BY PROHIBITING COERCIVE AND DISCRIMINATORY PRACTICES IN THE REPAIR OF MOTOR VEHICLES AND AUTOMOBILE GLASS REPAIR AND REPLACEMENT, BY PROVIDING FOR MORE CONSUMER DISCLOSURE BY INSURERS IN THE COLLISION REPAIR PROCESS, AND BY IMPOSING STRICTER MOTOR VEHICLE DAMAGE AND AUTOMOBILE GLASS REPAIR REGULATIONS AND PENALTIES ON INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-180 reads as rewritten:

"§ 58-3-180. Motor vehicle repairs; selection by ~~claimant.~~claimant; prohibited practices; penalties.

(a) A policy covering damage to a motor vehicle shall allow the claimant to select the repair service or source for the repair of the ~~damage.~~damage, including the repair service or source for the repair or replacement of automobile glass.

(b) The amount determined by the insurer to be payable under a policy covering damage to a motor vehicle shall be paid regardless of the repair service or source selected by the claimant.

(b1) No insurer or insurer representative ~~shall~~shall:

(1) Suggest or recommend the use of a particular motor vehicle repair service or a particular automobile glass repair or replacement service unless a referral is expressly requested by the claimant. without clearly informing the claimant that (i) the claimant is under no obligation to use the recommended repair service, (ii) the claimant may use the repair service of the claimant's choice, (iii) the amount determined by the insurer to be payable under the policy will be paid regardless of whether or not the claimant uses the recommended repair service, and

1 ~~(iv) that the insurer or insurer representative has, at the time the~~
2 ~~recommendations are made, a financial interest in the recommended~~
3 ~~motor vehicle repair service.~~

4 (2) Own or hold a controlling interest in either a motor vehicle repair
5 service or an automobile glass repair or replacement service that
6 performs services arising from automobile insurance claims.

7 (3) Make or issue, or cause to be issued, any written or oral statement that
8 willfully misrepresents a motor vehicle repair service or automobile
9 glass repair or replacement service or that willfully disparages a motor
10 vehicle repair service or automobile glass repair or replacement service
11 chosen by the claimant as to the quality, cost, conditions, or benefits of
12 using the particular repair service chosen by the claimant.

13 (4) Discriminate against a claimant or claimant's chosen motor vehicle
14 repair service or automobile glass repair or replacement service in any
15 way whatsoever.

16 (5) Refuse to acknowledge a claimant's choice of a motor vehicle repair
17 service or automobile glass repair or replacement service.

18 (6) Refuse to insure or continue to insure an individual or limit the
19 amount, extent, or kind of coverage available to the individual due to
20 the claimant's choice of a motor vehicle repair service or automobile
21 glass repair or replacement service.

22 (7) Limit or discount the reasonable basis of the repair cost based on
23 charges that would have been incurred had the motor vehicle been
24 repaired by the insurer's suggested or recommended repair service, if
25 the claimant elects to have the motor vehicle repaired at a repair
26 service of that person's choice.

27 ~~No insurer shall require that the insured or claimant must have a damaged vehicle~~
28 ~~repaired at an insurer owned motor vehicle repair service.~~

29 (b2) If the insurer or insurer representative suggests or recommends a particular
30 motor vehicle repair service or automobile glass repair or replacement service to the
31 claimant, the insurer shall inform the claimant that (i) the insurer is prohibited by law
32 from requiring that the repairs be done by a specific motor vehicle repair service or
33 automobile glass repair or replacement service, (ii) the claimant is under no obligation
34 to use the recommended repair service, (iii) the claimant may use the repair service of
35 the claimant's choice, (iv) the amount determined by the insurer to be payable under the
36 policy will be paid regardless of whether or not the claimant uses the recommended
37 repair service, (v) the damaged motor vehicle will be restored to its condition prior to
38 the loss at no additional cost to the claimant other than as stated in the insurance policy
39 or otherwise allowed by law, (vi) the claimant should contact the insurer if the claimant
40 experiences a problem with the repair of the motor vehicle or the repair or replacement
41 of the automobile glass, (vii) the insurer is receiving discounts under a direct repair
42 contract, if applicable, and (viii) the insurer or insurer representative has, at the time the
43 recommendations are made, a financial interest in the recommended motor vehicle
44 repair service or automobile glass repair or replacement service, if applicable.

1 If the insurer makes an oral recommendation of a particular motor vehicle repair
2 service or automobile glass repair or replacement service and the claimant accepts the
3 recommendation, the insurer shall provide the information required by this subsection in
4 writing in no less than 10-point type within five calendar days from acceptance of the
5 oral recommendation. The provisions of subsection (b1) of this section this subsection
6 shall be included in nonfleet private passenger motor vehicle insurance policy forms
7 promulgated by the Bureau and approved by the Commissioner.

8 (c) Any person who violates this section is subject to the applicable provisions of
9 G.S. 58-2-70 and G.S. 58-33-46, provided that the maximum civil penalty that can be
10 assessed under G.S. 58-2-70(d) for a violation of this section is ~~two thousand dollars~~
11 ~~(\$2,000).~~ five thousand dollars (\$5,000). A violation of this section includes:

12 (1) Alluding to or suggesting that the insurer will participate in the
13 warranty of or guarantee of repairs by a recommended motor vehicle
14 repair service or automobile glass repair or replacement service, unless
15 the insurer has in writing expressly exercised the option to repair as
16 allowed in the insurance policy. Once the insurer has exercised the
17 option to repair, the insurer shall then assume full warranty and
18 liability for the repairs.

19 (2) Implying or suggesting that a motor vehicle repair service or
20 automobile glass repair or replacement service chosen by the claimant
21 is somehow inferior or inconvenient to a repair service on the insurer's
22 list of repair services.

23 (3) Typing of services. – Unless it is in accordance with the insurance
24 policy or applicable law, no person shall imply, suggest, or allude that
25 the insurer's option to pay for the claimant's losses in money shall be
26 compromised or in any way diminished if the claimant chooses to use
27 the repair service of that person's choice.

28 (4) Failure to disclose to the claimant at the time that the insurer or insurer
29 representative recommends the use of a designated repair service in
30 connection with settling or paying any claim arising under a policy of
31 insurance that the insurer has agreed to discounts or concessions in
32 parts, labor, materials, or procedures as specified by the insurer that is
33 not transferable to the claimant, if the concessions or discounts do not
34 exist.

35 (5) Any act of coercion or intimidation causing or intending to cause any
36 licensed motor vehicle repair service or automobile glass repair or
37 replacement service to violate this section.

38 Violators of this section are liable for damages suffered by the claimant or repair
39 service, including attorneys' fees.

40 (d) As used in this section, "insurer representative" includes an insurance agent,
41 limited representative, broker, adjuster, ~~and appraiser.~~ appraiser, third-party
42 administrator, or any person acting either directly or indirectly on behalf of an insurer."

43 **SECTION 2.** G.S. 58-2-70(d) reads as rewritten:

1 "(d) If the Commissioner orders the payment of a monetary penalty pursuant to
2 subsection (c) of this section, the penalty shall not be less than ~~one hundred dollars~~
3 ~~(\$100.00) nor more than one thousand dollars (\$1,000).~~ five hundred dollars (\$500.00)
4 nor more than five thousand dollars (\$5,000). In determining the amount of the penalty,
5 the Commissioner shall consider the degree and extent of harm caused by the violation,
6 the amount of money that inured to the benefit of the violator as a result of the violation,
7 whether the violation was committed willfully, and the prior record of the violator in
8 complying or failing to comply with laws, rules, or orders applicable to the violator. The
9 clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund
10 in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section
11 shall be in addition to payment of any other penalty for a violation of the criminal laws
12 of this State."

13 **SECTION 3.** G.S. 58-63-15(2) reads as rewritten:

14 "(2) False Information and Advertising Generally. – Making, publishing,
15 disseminating, circulating, or placing before the public, or causing,
16 directly or indirectly, to be made, published, disseminated, circulated,
17 or placed before the public, in a newspaper, magazine or other
18 publication, or in the form of a notice, circular, pamphlet, letter or
19 poster, or over any radio station, or in any other way, an
20 advertisement, announcement or statement containing any assertion,
21 representation or statement with respect to the business of insurance or
22 with respect to any person in the conduct of his insurance ~~business,~~
23 business, motor vehicle repair business, or automobile glass repair or
24 replacement business, which is untrue, deceptive or misleading."

25 **SECTION 4.** G.S. 58-63-15(3) reads as rewritten:

26 "(3) Defamation. – Making, publishing, disseminating, or circulating,
27 directly or indirectly, or aiding, abetting or encouraging the making,
28 publishing, disseminating or circulating of any oral or written
29 statement or any pamphlet, circular, article or literature which is false,
30 or maliciously critical of or derogatory to the financial condition of an
31 insurer, and which is calculated to injure any person engaged in the
32 business of ~~insurance~~insurance or in the business of motor vehicle
33 repair or automobile glass replacement or repair."

34 **SECTION 5.** G.S. 58-63-15(4) reads as rewritten:

35 "(4) Boycott, Coercion and Intimidation. – Entering into any agreement to
36 commit, or by any concerted action committing, any act of boycott,
37 coercion or intimidation resulting in or tending to result in
38 unreasonable restraint of, or monopoly in, the business of
39 ~~insurance~~insurance or in the business of motor vehicle repair or
40 automobile glass replacement or repair."

41 **SECTION 6.** G.S. 58-63-15 is amended by adding a new subdivision to

42 read:

43 "(14) Fraudulent, coercive, or dishonest practices. – Using fraudulent,
44 coercive, or dishonest practices in the settlement of a claim or

1 demonstrating incompetence, untrustworthiness, or financial
2 irresponsibility in the conduct of business in this State, including acts
3 for which an insurance producer license is denied or suspended."

4 **SECTION 7.** Article 1 of Chapter 75 of the General Statutes is amended by
5 adding a new section to read:

6 **"§ 75-39. Restrictions on motor vehicle repair and automobile glass repair or**
7 **replacement.**

8 (a) No person, business, or other legal entity doing business in this State that
9 installs, repairs, or replaces automobile glass knowingly shall engage in any of the
10 following acts:

11 (1) Offer to finance payment of a customer's deductible on terms different
12 from terms offered to customers not making an insurance claim.

13 (2) Engage in a pattern or practice, on more than an occasional or isolated
14 instance, of promising or offering to provide any credit, incentive, gift,
15 rebate, or special financing arrangement in satisfaction of all or part of
16 an insurance deductible or co-payment owed by the insured under a
17 policy of insurance.

18 (3) Advertise, promote, or represent by any media, telemarketers, or
19 others, that services are 'free' if in fact an insurer will pay for the
20 service or advertise or make offers for the purpose of soliciting a claim
21 against a property or casualty insurer.

22 (4) Engage in a pattern or practice, on more than an occasional or isolated
23 instance, of offering to defer collection of, discount, or issue a
24 repayment of a customer's deductible based in whole, or in part, on the
25 availability of insurance coverage.

26 (b) No insurer or insurer representative as that term is defined in G.S. 58-3-180
27 knowingly shall require a claimant to have a damaged vehicle repaired at a particular
28 motor vehicle repair service.

29 (c) A violation of this section shall be considered an unfair trade practice, as
30 prohibited by G.S. 75-1.1.

31 (d) Any person who suffers an economic loss as a result of the violation of this
32 section may bring an action to recover damages in the General Court of Justice. Actions
33 brought pursuant to this section shall be tried in the county where the violation occurred
34 or in any county where the defendant resides or conducts, transacts, or has transacted
35 business."

36 **SECTION 8.** This act becomes effective October 1, 2005.