

## SENATE BILL NO. 356

INTRODUCED BY B. USHER, M. CAFERRO

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING INSURANCE UNFAIR TRADE PRACTICES RELATING TO THE DESIGNATION OF SPECIFIC AUTOMOBILE BODY REPAIR BUSINESSES; PROHIBITING AN INSURER FROM DISREGARDING OR REQUESTING AN AUTOMOBILE BODY REPAIR BUSINESS TO DISREGARD CERTAIN INSTRUCTIONS FROM THE ORIGINAL EQUIPMENT MANUFACTURER; AMENDING SECTION 33-18-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 33-18-224, MCA, is amended to read:

**"33-18-224. Designation of specific automobile body repair businesses prohibited.** (1) (a) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(i) require that a claimant under the policy use a particular automobile body repair business or location for an estimate or a repair;

(ii) engage in any act or practice that intimidates, coerces, or threatens a claimant or that provides an incentive or inducement for a claimant to use a particular automobile body repair business or location; or

(iii) unilaterally disregard a repair operation or cost identified by an estimating system that the insurer and an automobile body repair business or location have agreed to utilize in determining the cost of repair; or

(iv) disregard or request an automobile body repair business to disregard:

(A) repair instructions from an original equipment manufacturer; or

(B) safety inspections of collision-damaged automobiles recommended by an original equipment manufacturer.

(b) The requirements of subsections (1)(a)(i) through (1)(a)(iv) do not restrict the use of alternative

1    repair parts.

2            (b)(c)    An insurance company, including its producers and adjusters, that issues or renews a policy of  
3    insurance in this state covering, in whole or in part, a motor vehicle may have access to the motor vehicle for  
4    purposes of preparing a competitive estimate.

5            (2)        (a) Except as provided in subsection (2)(b), if an insurance company has direct repair programs  
6    with automobile body repair businesses or locations, the insurance company may not limit the number of  
7    automobile body repair businesses or locations with whom it maintains direct repair programs.

8            (b)        An insurance company may limit the number of automobile body repair businesses or locations  
9    participating in the insurance company's direct repair program to those automobile body repair businesses or  
10   locations that comply with the provisions of subsection (2)(c). An insurance company is not required to establish  
11   a direct repair program in a particular market area in which the insurance company's number of policyholders  
12   does not support establishing a direct repair program with any automobile body repair business or location.

13           (c)        Upon request, the insurance company shall provide, without prejudice or bias, the claimant with  
14   a list that includes all automobile body repair businesses or locations that are reasonably close or convenient to  
15   the claimant and willing to provide services and that meet the insurance company's criteria regarding whether  
16   the automobile body repair business or location:

17           (i)        possesses the equipment necessary to undertake repairs;

18           (ii)       undertakes training of management and technical personnel with respect to repair information  
19   and the claims process;

20           (iii)       agrees to perform quality repairs at the market price and that meet reasonable industry repair  
21   standards;

22           (iv)       agrees to warrant the quality of work, including refinishing, in writing to the claimant, for a  
23   period of not less than 1 year from the date of repair;

24           (v)        agrees to inspection of its repairs and services by the insurance company and agrees that the  
25   insurance company may terminate the direct repair program with the automobile body repair business or  
26   location if the repairs and services are below the standards of quality required by the insurance company; and

27           (vi)       if requested, agrees to execute an agreement with the insurance company that may contain  
28   additional criteria that are not designed to unfairly limit the number of automobile body repair businesses or

1 locations with whom the insurance company maintains direct repair programs. The additional criteria may  
2 include criteria determined to be necessary by the insurance company and designed to ensure that the  
3 automobile body repair business or location has the necessary estimating systems and programs and  
4 equipment to communicate electronically with the insurance company and that the automobile body repair  
5 business or location has taken steps to ensure the privacy of the insurance company and the claimant.

6 (d) If the claimant requests the list provided for in subsection (2)(c), the insurance company shall  
7 inform the claimant that the claimant may use an automobile body repair business or location at the sole  
8 discretion of the claimant.

9 (3) For the purposes of this section, an incentive or inducement does not include:

10 (a) providing a claimant with the list provided for in subsection (2)(c); or

11 (b) referring to a warranty issued by an automobile body repair business or location.

12 (4) The claimant may use an automobile body repair business or location at the claimant's sole  
13 discretion, and the insurance company shall pay for the reasonable and necessary cost of the automobile body  
14 repair services for covered damages, less any deductible under the terms of the policy. This section does not  
15 require an insurer to pay more for automobile body repair services than the market price, as defined in 33-18-  
16 222.

17 (5) If the claimant uses an automobile body repair business or location that is not on a list provided  
18 for in subsection (2)(c), the insurance company may not be held liable for any repair work performed by the  
19 automobile body repair business or location chosen by the claimant.

20 (6) It is unlawful for an automobile body repair business or location to charge or agree to charge a  
21 claimant more than an uninsured customer for any automobile body repair service.

22 (7) An insurance company that contracts with an independent adjuster may not be held liable for  
23 the independent adjuster's failure to comply with the terms of this section.

24 (8) For purposes of this section:

25 (a) "automobile body repair business or location" does not include a business or location that  
26 exclusively provides automobile glass replacement, glass repair services, or glass products; and

27 (b) "claimant" means the person seeking repair of a motor vehicle whether that person is the  
28 insured person or a third party making a claim against the insurer."

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2        NEW SECTION. **Section 2.    Effective date.** [This act] is effective on passage and approval.

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4        NEW SECTION. **Section 3.    Applicability.** [This act] applies to insurance claims relating to motor  
5 vehicles that are made on or after [the effective date of this act].

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