

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on  
Agriculture and  
Insurance  
(SC-AI)

File Naming Example:

Record of Comm. Proceedings ... RCP  
> 05hr\_AC-Ed\_RCP\_pt01a  
> 05hr\_AC-Ed\_RCP\_pt01b  
> 05hr\_AC-Ed\_RCP\_pt02

COMMITTEE NOTICES ...

> Committee Hearings ... CH (Public Hearing Announcements)

> \*\*

> Committee Reports ... CR

> \*\*

> Executive Sessions ... ES

> \*\*

> Record of Comm. Proceedings ... RCP

> \*\*

INFORMATION COLLECTED BY COMMITTEE  
CLERK FOR AND AGAINST PROPOSAL

> Appointments ... Appt

> \*\*

Name:

> Clearinghouse Rules ... CRule

> \*\*

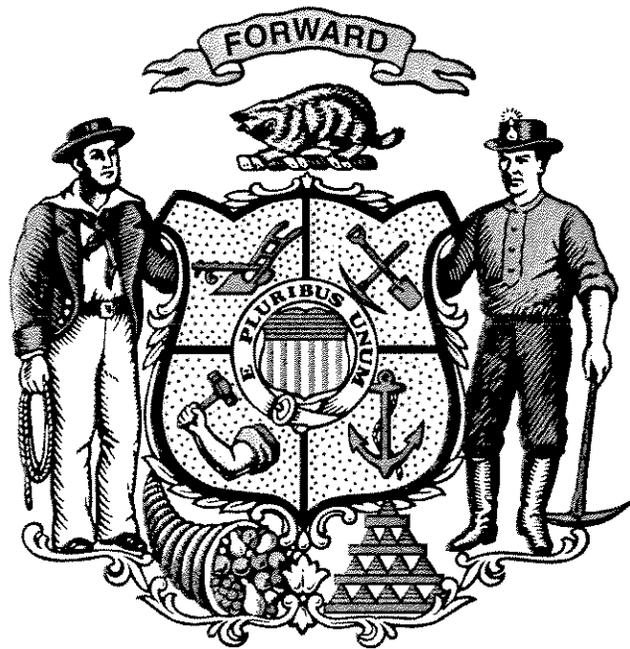
> Hearing Records ... HR (bills and resolutions)

> \*\*

> Miscellaneous ... Misc

> **05hr\_SC-AI\_Misc\_pt03**

- ISSUE: AutoBody STEERAGE -



94TH GENERAL ASSEMBLY  
State of Illinois  
2005 and 2006  
HB2330

Introduced 2/16/2005, by Rep. Thomas Holbrook

SYNOPSIS AS INTRODUCED:

215 ILCS 5/155.42 new

Amends the Illinois Insurance Code. Prohibits insurers from requiring vehicles to be repaired at specific repair facilities. Requires that, before an insurer recommends a specific repair facility, the claimant must request a referral. Requires the insurer to prominently display any suggestion or recommendation of a repair facility in the insurance contract and to not limit or discount the reasonable basis of repair costs if the insured chooses another repair facility. Grants powers to the Secretary to enforce this Section. Provides civil penalties. Provides non-exclusive examples of violations. Makes insurers liable to claimants and repair facilities for damages from violations.

LRB094 08411 LJB 38613 b

A BILL FOR

HB2330

LRB094 08411 LJB 38613 b

1 AN ACT concerning insurance.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Illinois Insurance Code is amended by adding



7 VEHICLE, PLEASE CONTACT US IMMEDIATELY FOR ASSISTANCE."  
 8 (c) Except as provided in this Section, after the claimant  
 9 has chosen a repair facility, the insurer shall not suggest or  
 10 recommend that the claimant select a different automotive  
 11 repair facility.  
 12 (d) An insurer that suggests or recommends in the insurance  
 13 contract that a motor vehicle be repaired at a particular  
 14 repair facility (i) shall prominently disclose the contractual  
 15 provision in writing to the insured at the time the insurance  
 16 is applied for and at the time the claim is acknowledged by the  
 17 insurer and (ii) if the claimant elects to have the motor  
 18 vehicle repaired at the repair facility of his or her choice in  
 19 his or her relevant market area, the insurer shall not limit or  
 20 discount the reasonable basis of repair costs as defined in  
 21 paragraph 6 of Section 70 of the Automotive Collision Repair  
 22 Act based on charges that would have been incurred had the  
 23 motor vehicle been repaired by the insurer's suggested or  
 24 recommended repair facility.  
 25 (e) For purposes of this Section:  
 26 "Any person" or "person" means any person who is employed  
 27 by or subcontracted by an insurance company or agent or  
 28 adjusting firm involved in handling the insurance claim.  
 29 "Claimant" means a first party claimant or insured or a  
 30 third party claimant who asserts a right of recovery for motor  
 31 vehicle repairs under an insurance policy.  
 32 "Relevant market area" for an automotive collision  
 33 repairer licensed under Section 5-301 of the Illinois Vehicle  
 34 Code means the area within 10 miles of the established place of  
 35 business of the repairer located in a county with a population  
 36 of 300,000 or more or the area within 15 miles of the

HB2330 - 3 - LRB094 08411 LJB 38613 b

1 established place of business of the repairer located in a  
 2 county with a population of less than 300,000.  
 3 (f) The powers of the Secretary to enforce this Section  
 4 shall include those granted in Section 425 of this Code.  
 5

6 (g) Any person who engages in any activity that violates  
 7 this Section is liable to the State for a civil penalty to be  
 8 determined by the Secretary not to exceed \$5,000 for each  
 9 violation or, if the act or practice is willful, a civil  
 10 penalty not to exceed \$10,000 for each violation. The Secretary  
 11 shall have the discretion to establish what constitutes a  
 12 violation. When violations resulting from the issuance,  
 13 amendment, or servicing of a policy or endorsement are  
 14 inadvertent, all of those violations shall be a single  
 15 violation for the purposes of this Section.

16 A violation of this Section shall include, but is not  
 17 limited to:

18 (1) Alluding to or suggesting that the insurer shall  
 19 participate in the warranty of or guarantee the repairs by  
 20 a recommended repair facility, unless the insurer has in  
 21 writing expressly exercised the option to repair as allowed  
 22 in the insurance policy. Once the insurer has exercised the  
 23 option to repair, the insurer shall then assume full  
 24 warranty and liability for the repairs.

25 (2) Implying or suggesting that an auto body repair  
 26 shop chosen by the claimant is somehow inferior or  
 27 inconvenient to a repair shop on the insurance company's  
 28 list of repair shops.

29 (3) Tying of services. Unless it is in accordance with  
 30 the insurance policy or applicable law, no person shall  
 31 imply, suggest, or allude that the insurance company's  
 32 option to pay for the claimant's losses in money shall be  
 33 compromised or in any way diminished if the claimant  
 34 chooses to use the repair facility of his or her choice.

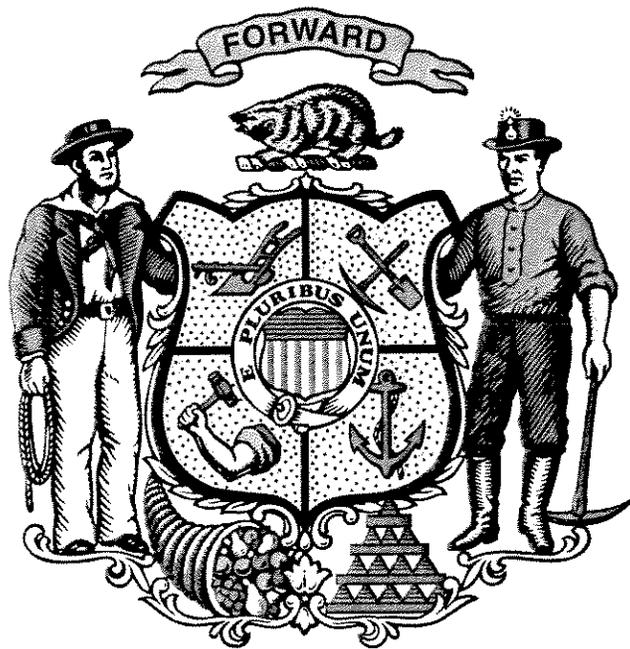
35 (4) Failure to disclose to the claimant at the time  
 36 that the insurer or third party representative recommends  
the use of a designated repair facility in connection with

1 settling or paying any claim arising under a policy or  
 2 policies of insurance that the insurer or third party  
 3

4 representative has agreed to discounts or concessions in  
5 parts, labor, materials, or procedures as specified by the  
6 insurer that is not transferable to the claimant, if the  
7 concessions or discounts do exist.

8 (5) Engagement in any act of coercion or intimidation  
9 causing or intending to cause any licensed automobile  
10 repair shop to violate the Automotive Collision Repair Act  
11 as a requirement to join or remain on any insurance company  
12 referral list.

13 (h) Violators of this Section are liable for any damages  
14 suffered by the claimant or repair facility, including attorney  
fees.



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[Previous entry: "AIG Appraiser Does Not Play Well With Others"] [Main Index]

BodyShop Solutions

**03/10/2005: "The Fight Within. What Side of the DRP Battle Are You On?"**

ABAC Homepage

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have something  
constructive to  
contribute to this  
page?

You can feel the rumbling. The foundation of our industry is shaking. The cause is deep, deep in the souls of the men and women who run the 40 or 50 thousand body shops across this country. It's been shaken before, but like the latest complaints from Mount St. Helens, little has come of it. Scientists have no idea when that miserable mountain will explode again. It can't be predicted. Collision repair industry "experts" have no idea whether the pressure built up over the decades from the mix of repairers and insurers will find that little crack needed to release energy explosive enough to change the landscape of the collision repair industry.

Join my mailing list.

Whether you are pro DRP, anti DRP or somewhere in between, you cannot ignore that it is a contentious issue. In fact it is dividing our industry like slavery did to our country one hundred and fifty years ago. Many are opposed to the DRP philosophy but are forced to participate to survive. Other shops are willing to prostitute themselves completely for the promise of a full shop. And then there are those shop owners who have held firm and refuse to participate in any program under any circumstances.

Remove your address  
from my mailing list.

Privacy Policy

For the purpose of disclosure, I'll tell you that my shop has three DRP's. They account for less than 10% percent of my work, and most of that work I would get already because the vehicles are the makes that our dealership sells. These companies pay the highest labor rates of all the insurance companies in the area, and they do not allow aftermarket parts. One company, in fact, won't even allow us to use LKQ parts. These are basically direct pay relationships.

Many would find my active participation in trying to outlaw DRP relationships strange. It's not at all. I could care less if I had them or not. I wouldn't lose a dime if they disappeared tomorrow. In fact, my bottom line would fatten faster than Kirstie Alley working in a bakery. Without the signed contracts between the DRP shops in my area and the notoriously stingy insurance companies like Nationwide, Progressive, Allstate, Liberty Mutual (Did I forget anyone?) labor rates would rise. At least in theory, anyway. We'd still have those geniuses, you know, the nominees for the Nobel prize in business, who would post labor rates at or below what the insurance companies think we should be paid.

We've all read about the kickback schemes between some large independent insurance agencies and even larger insurance companies. The insurance companies have been secretly paying insurance agents to push a particular policy on their customers. Insurance customers have been paying millions more than they should have paid for their insurance coverage because instead of working for the client, the agent was really working for the insurance company. And even though the insurance company had to pay the agent for the referral, the inflated price of a policy made up the difference. Remember now, even though it appears that the cost to the insurance company in this scheme is more, and that they are sacrificing profit for business, they are actually making higher profits because they don't have to compete with other insurance companies for the consumer's business. The agent is being compensated to steer his customer to the insurance company that is the highest bidder. The agent makes more than just a normal commission. The agent also gets that kickback. The insurance company makes more money and the agent makes more money. The consumer, however, gets screwed. Gee, what a surprise. Consumers getting screwed by the insurance industry. I never would have believed it if I hadn't seen it for myself.

Now let's analyze the typical Progressive or Nationwide, or any other cheapskate insurance company, DRP relationship with a body shop. It's much like the payola

relationship with the insurance agent, only it's worse. There are still three parties involved, but this time, only one of the three parties makes money. In the payola scheme both the agent and insurer profited. In the DRP scheme, only the insurer profits. I can hear many of you now. "That's crap. We're a DRP and we make plenty of money!"

Do you really?

In the typical DRP relationship, with one of the big, cheap insurance companies, the repair shop has to give up something. The shop has to offer discounts on parts or labor or both. If the shop owner is sharp enough to get an agreement with one of these insurers without giving discounts, he has to give up his integrity by agreeing to use counterfeit parts. Folks, using the terms "quality replacement parts," "aftermarket parts," "non-OEM," "alternative replacement parts" or any other euphemism the insurance industry comes up with in the future, does not change that these parts are nothing more than counterfeits.

Think about it. You buy a Rolex from some homeboy in New York City. It works fine. It tells time. Your girlfriend thinks you are so hot now because you wear a Rolex. She thinks it's the real deal. Do you think she'd be as impressed if you told her it was a counterfeit? It looks as good and works as good as a real Rolex. Don't you think there's some value to an item or product actually being what it is presented as. Hey, I'd love to knock off some fifty dollar bills on my Hewlett Packard. They look the same, function the same, what's the problem? A counterfeit by any other name is still a counterfeit. Car companies have spent years and paid engineers millions developing their products. Bumpers, hoods, fenders all contribute to the brand and its appeal. Then along comes a bunch of little communists who copy these parts (very poorly) and make a fortune flooding the US with counterfeit recycled beer cans.

Shop owners who conspire with insurance companies to steal from car owners by installing inferior counterfeit parts are selling their integrity in return for an empty promise from the insurance companies to keep their bays full of wrecks. So if you are slick enough to get an agreement with the insurance company that doesn't include discounts, and you just have to keep that percentage of counterfeit parts use at a level they find acceptable, you are still losing.

But it gets worse. Not only do you lose, but you cause the consumer to lose. Are all your customers aware of the commie beer cans pretending to be fenders on their vehicles? If you are a Nationwide DRP you know that they will write counterfeit parts on any vehicle, even if it is brand new car with one mile on it. If the part is available, you have to use it. How many consumers would willingly go along with that? How many repairers are cold hearted enough to sleep at night knowing they just put junk parts on someone's brand new car? The vehicle owner is no longer your customer, the insurance company is. They are also your business manager because you are following the business model they set up for you. Congratulations on your new position.

You damn fools are selling yourselves like a bunch crack addicted ghetto whores. It's almost comical. It would be a riot if it weren't screwing up the entire collision repair industry. The insurance industry wiggled some smelly bait in front of your faces and you took it, hook line and sinker. Sure, you have a parking lot full of work. Oh yeah, you've just added on and hired an army of office staff to do all the extra paperwork. Look at you! You're going places. To fall for this is to believe that you need the insurance companies to be successful. They've convinced you that you can afford to offer them a volume discount. The insurance industry has relied on your ignorance of business and economics to hoodwink you into selling your soul to satisfy their insatiable appetite for profits.

I have nothing against profits. Profits are great. But where are your profits? Where are your honest, proudly earned profits. I'll tell you where they are. They are in the accounts of Progressive, Nationwide, Allstate, Met-Life, The Hartford.....

You're an entrepreneur. You are not supposed to believe in wealth distribution. That's a socialist's concept. But by participating in the DRP programs, by being the addicted whores to the profit hungry Progressive Pimps, you are redistributing wealth. You are

taking it from your consumer, adding a big chunk of your wealth to the pot and handing it over to the insurance industry. You are participating in a socialist program so the big insurance companies can advertise the lowest rates. You are helping to subsidize the bad drivers. You are helping to fill the pockets of attorneys who make a living suing insurance companies. You are the path of least resistance. The insurers can't win against the attorneys, so they are picking on you. They are capitalizing on your stupidity.

You must never forget one of the most important concepts in your business. You can not offer a volume discount on labor. Labor can not be stored. It cannot be liquidated. Labor cannot be shipped to another store across the country where it is more in demand. Labor is only consumed in real time. Until collision repair processes can be automated, you cannot produce more with fewer people unless your operation is now run inefficiently. Someday we will be able offer insurers discounts on these processes. Someday there will be machines to do everything and all we'll have to do is add another machine or run them longer. We have already driven away half of our workforce. Few people want to do what we do for the little we get paid. DRP's just make it worse.

The DRP only benefits the insurance company. It steals from the shops and it steals from the consumers. Attorneys General across the country are beginning to smell the stink from the DRP pit. Just recently, after working with the Auto Body Association of Connecticut, Attorney General Richard Blumenthal announced that he was calling for the Insurance Commissioner to be an elected official instead of being appointed by the Governor. Between the payola scam he was investigating and the ABAC's complaints, Blumenthal got a first hand look at the shenanigans in the Insurance Department. He saw a clear bias toward the insurance industry and understands that it is contrary to the department's mission.

I'm happy to say that a bill has made it out of legislative committee that would require the Insurance Commissioner to an elected official, answerable only to the citizens of Connecticut. There is also a bill making its way through the legislature that would outlaw DRP's in Connecticut. The same bill puts auto damage appraisers under the watch of Connecticut's Consumer Protection office. Appraisers would be held accountable for their actions, and hopefully, they would become "independent" like they are supposed to be.

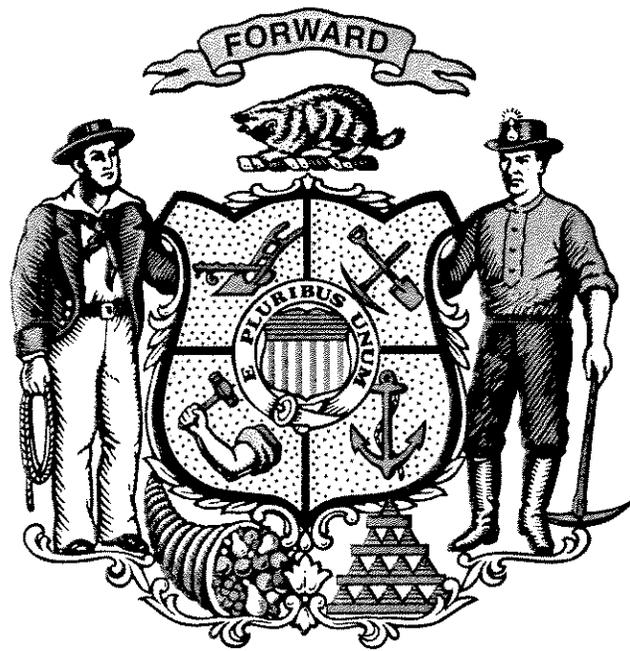
Unfortunately, the slimeballs ruling from the insurance castle in Hartford have introduced their own bill. It's a doozy too. Essentially, it makes the insurance company the customer and takes all control of the repair from the vehicle owner. Shops would have to turn over all invoices and paperwork related to the repair for the insurers' inspection. Repairers could only repair a vehicle by the insurance estimate, and the vehicle owner would be obligated to have all repairs done. Shops would have to allow reinspections by insurers at the shop during the repair. The bill is ridiculous. But we are taking no chances. We are working hard to ensure this bill becomes recyclable material.

The battle is on. Three Connecticut shops have filed a class action lawsuit against The Hartford for steering work to their many DRP shops. Many Hartford DRP shops have been served with papers and ordered to produce piles of records. The Associated Press is working on an article about the ABAC's fight with the almighty, powerful insurance industry. DRP shops are defending their choice to prostitute themselves. And the Connecticut Automotive Retailers Association has decided to fight the ABAC and oppose the anti-steering, ant-DRP bill now making its way through the legislature. Interestingly, CARA's Legislative Chairman is Ken Crowley, owner of a large chain of dealerships and one of the biggest DRP whores in the state. Go figure.

How's the battle in your state? Are you doing anything, or are you just complaining.

#### Replies: 1 Comment

I agree with you and I am writing my own radio commercials and hammering DRP's and Insurer recommended repair facilities. I recieved an anonymous phone call from a male voice stating that since I did not like working for Insurance companies he would make sure I did not get anymore Insurance work! I wrote an ad just for him. I hope he cringes every time it runs.



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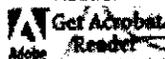
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# CollisionWeek

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Thursday, April 21, 2005

### Montana Passes All or Nothing DRP Bill to Stop Steering

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**Awaiting the Governor's signature is a bill that supporters hope will put an end to steering in the state.**

Introduced in February by Montana's leading Republican Senator Bob Keenan and billed as legislation to prevent insurers from steering consumers to body shops, Montana Senate Bill 388 has passed both the House and Senate and is now on the Governor's desk awaiting signature. While the bill appears designed to eliminate steering and provide a level playing field for repairers, it specifically eliminates insurer liability for work performed outside of its referral network.

Already on the books in Montana was a law that prevents insurers from requiring that a person use a particular automobile body repair business. Existing law further states that insurers may not intimidate, coerce, or threaten an insured person to use a particular automobile body repair business.

Repairers commonly complain however that insurers circumvent this type of law using a common practice where insurers steer consumers by saying that they guarantee the repair at their DRP shop, implying that any shop outside of their recommended group is not guaranteed in any way, may cost more, and may take longer to repair their car. This is a powerful argument to a consumer.

Gene Dziza, shop owner and head of the Legislative Committee for the Montana Collision Repair Specialists, explained that the problem with this system is that plenty of shops may be qualified to be on an insurers DRP program, and do the same of higher quality work, but they never get the chance, and work is steered miles away from their shop.

"With the exception of State Farm, and possibly the Farm Bureau, the insurers in Montana operate very closed DRP systems. If you wanted to join a particular DRP program, you are told that they already have enough shops in their program;

they won't even talk to you. You don't even get a chance to see the criteria for joining their DRP, let alone get the chance to qualify for it," explained Dziza.

The intent of the Montana bill is to require that insurers wishing to operate a DRP program in the state operate it openly and fairly. "We don't want to micro-manage the criteria an insurer uses to qualify shops for their DRP, as long as it's the same for every shop, we just want it to be fair. When you run this idea by a legislator the response is always 'That sounds fair.'"

\* SB 388 has several facets affecting the operation of DRP programs in Montana. First, and most importantly, it says that an insurer may not limit the number of shops participating in its DRP program, provided the shops applying to participate meet certain minimum requirements, which are made available to all shops on an equal basis.

\* Second, the bill says that upon request, "the insurance company shall provide" (read as: legally must provide), a list of all shops reasonably close or convenient to the insured and willing to provide services that meet the insurance company's criteria.

To its credit as 'anti-steering' legislation, the bill also says that if the insured person requests [the list], the insurance company shall inform the consumer that they may use any shop at their sole discretion. In almost the same breath, the bill goes on to say that "If the insured person uses an automobile body repair business or location that is not on [the list], the insurance company may not be held liable for any repair work performed by the [shop] chosen by the insured person." They are legally not required to guarantee the work, nor can they be held liable for it.

By putting into law the insurers ability to overtly offer or deny their guarantee of repair work, the law may unintentionally have made steering easier.

\* In Massachusetts, repairers are addressing this gray-area of insurer guarantees by proposing legislation that would make it illegal for insurers to offer any guarantee, whether the shop has an agreement with an insurer or not. According to Steve Regan, of the Massachusetts Auto Body Association, during meetings of the legislative "Auto Body Working Group" in Massachusetts insurers admitted that they never actually paid out on any guarantees because their agreements/contracts with shops required the shop to indemnify the insurer.



"The legislators participating in the "working group" were

convinced by IABA's position that the insurer guarantee was used more as a tactic to sway consumer choice, rather than offering a substantive guarantee to the insured," said Regan. "In fact, the legislators incorporated into our proposed bill, language that would make it illegal for an insurer to even suggest in writing or verbally that they would guarantee the repairs. The legislators agreed that the offer of a guarantee was likely the single biggest tool used by insurers to steer work," concluded Regan.

The new bill in Montana could possibly take that practice of guaranteeing referral work out of the gray area and turn it into a near legal requirement.

Dziza disagrees, "Everyone knows the intent of this law, from the insurers and the Insurance Commissioner, to the legislative body. And the legislators have already warned that if the insurers try to get around this law as it is intended, they will come back next year and make DRP programs illegal altogether." Dziza expects that the smaller insurers that have only one or two DRP shops per city, will likely pull their DRP program altogether, rather than bear the expense of administering a DRP program under the new law, along with the shop evaluation program and DRP list maintenance that must necessarily accompany it.

Dziza said that some of the insurance company lobbyists had fought the bill saying that the state was trying to tell them how to run their business by statute. "Our response was, well, by statute, we tell people to buy your product, so shouldn't we, by statute, protect those people?"

Dziza continued, "I disagree with people that categorically classify direct repair as an inherently evil process. Shops that participate in State Farm's Service First program seem to agree universally that it is a great program. The program is open to all shops that are willing and are qualified. Now, with the passage of SB388, all insurers that continue to administer a direct repair program in Montana will have to offer [a similar program]"

"There are legitimate service advantages to direct repair. If you take away pricing and the ability to exclude certain repair shops from participating, the programs can be friendly to both consumers and repairers. State Farm has created a model for us that works well for everyone."

The measure passed in the Senate with a vote of 50-0 and in the House, 96-4. It was sent to the Governor on April 16, and could become law any day. Once it is signed, it will become effective October 1.

**"We really hope SB 388 changes the industry for the better," concluded Dziza.**

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cw

**Final amended and passed version of Montana Senate Bill 388**

AMENDING SECTIONS 33-18-224 AND 33-18-1006, MCA.

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 shops prohibited.** (1) 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:

(a) require that a person insured under the policy use a particular automobile body repair business or location; or

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person or that provides an incentive or inducement for an insured person to use a particular automobile body repair business or location.

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

(b) An insurance company may limit the number of automobile body repair businesses or locations participating in the insurance company's direct repair program to those automobile body repair businesses or locations that comply with the provisions of subsection (2)(c). An insurance company is not required to establish a direct repair program in a particular

market area in which the insurance company's number of policyholders does not support establishing a direct repair program with any automobile body repair business or location.

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

(i) possesses the equipment necessary to undertake repairs;

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

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

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

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

(vi) if requested, agrees to execute an agreement with the insurance company that may contain additional criteria that are not designed to unfairly limit the number of automobile body repair businesses or locations with whom the insurance company maintains direct repair programs. The additional criteria may include criteria determined to be necessary by the insurance company and designed to ensure that the automobile body repair

business or location has the necessary estimating systems and programs and equipment to communicate electronically with the insurance company and that the automobile body repair business or location has taken steps to ensure the privacy of the insurance company and the insured person.

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

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

(a) providing an insured person with the list provided for in subsection (2)(c); or

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

~~(2) For the purposes of this section, an incentive or inducement does not include:~~

~~(a) providing an insured person or a customer with a list of all established automobile repair businesses or locations reasonably close to the insured person or customer that offer a warranty for the automobile repair services provided by the businesses or locations;~~

~~(b) providing an insured person or a customer with a list of particular body shops meeting reasonable standards of quality, service, and safety when the list is requested by the insured person or customer; or~~

~~(c) referring to a warranty issued by an automobile repair business or location.~~

~~(3)~~(4) The insured may use an automobile body repair business or location at the insured's sole discretion, and the insurance company shall

pay for the reasonable and necessary cost of the automobile ~~body~~ body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile ~~body~~ body repair services than the lowest prevailing market price, as defined in 33-18-222.

~~(4) If the insured person uses an automobile repair business or location not on a list provided under subsection (2)(a) or (2)(b), the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use.~~

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

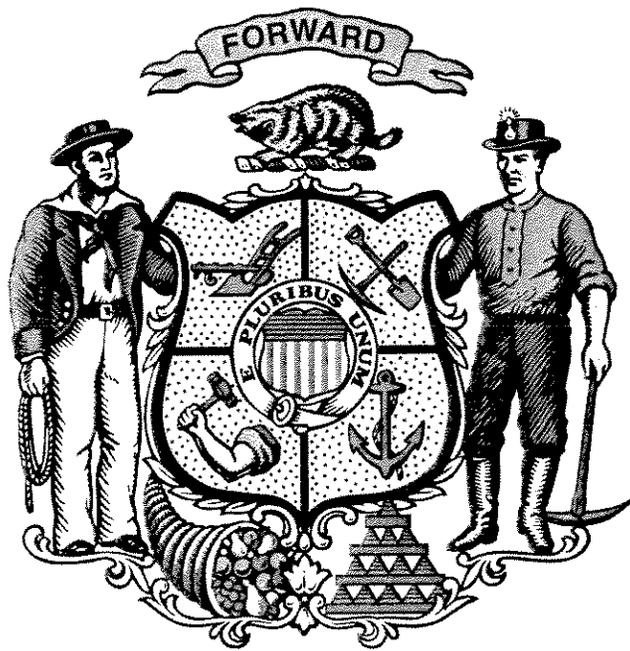
~~(5)(6)~~ It is unlawful for an automobile body repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile body repair service.

~~(6)(7)~~ An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section.

~~(7)(8)~~ For purposes of this section, "automobile body repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

**Section 2.** Section 33-18-1006, MCA, is amended to read:

**"33-18-1006. Desist orders for prohibited practices.** Violations of 33-18-221 through ~~33-18-223~~ 33-18-224 are subject to cease and desist orders of the commissioner issued under 33-18-1004."





## Minnesota laws considered victories for state's collision repair shops

Jun 6, 2005

Automotive Body Repair News

Minnesota's Governor Tim Pawlenty was praised this week by the Alliance of Automotive Service Providers, Minnesota, (AASP-MN) for signing two shop-related laws that go into effect Aug. 1.

The first law excludes the cost of repairing air bag systems from the threshold for requiring that consumers have their vehicle title stamped "salvage." AASP-MN argued that consumers who have air bag systems properly repaired should not be penalized by having the value of their vehicle reduced by virtue of the salvage title stamp. Passed unanimously in both bodies of the state's legislature, the new law will not change the authority of insurers to declare vehicles a total loss, but it should allow more vehicles to go through the retail repair stream, said Judell Anderson, AASP-MN executive director.

The second bill establishes a word track that insurers must use in their claims-handling process. The statutory language makes it clear to the insured that they have the right to choose a repair shop. Furthermore, under the new law, insurers must stop any effort to influence an insured's decision regarding where to have their vehicle repaired as soon as the insured indicates that they have selected a repair shop.

"In my opinion, the real strength of this legislation is in the provision that prohibits an insurer from attempting to influence an insured's or claimant's choice of shop, once the vehicle owner has made it known that they have selected a specific repair shop," said Anderson. "At the point Joe Smith says, 'I want to take my vehicle to ABC Auto Body,' that's the end of the conversation. The insurer can't go on to make claims about the alleged benefits of staying within its network of shops. Now it's up to the shops to educate customers to make their shop selection known immediately, at the time the claim is reported."

Specifically, the following language (underlined) will be added to the Minnesota Fair Claims Practices Statute: "...the following acts by an insurer, adjuster, or a self-insured or self-insurance administrator constitute unfair settlement practices:

...engaging in any act or practice of intimidation, coercion, threat, incentive, or inducement for or against an insured to use a particular contractor or repair shop. Consumer benefits included within preferred vendor programs must not be considered an incentive or inducement. At the time a claim is reported, the insurer must provide the following advisory to the insured or claimant:

"Minnesota law gives you the right to choose a repair shop to fix your vehicle. Your policy will cover the reasonable costs of repairing your vehicle to its pre-accident condition no matter where you have repairs made. Have you selected a repair shop or would you like a referral?"

After an insured has indicated that the insured has selected a repair shop, the insurer must cease all efforts to influence the insured's or claimant's choice of repair shop."



- 2.21 the insured is not an automobile dealer, failing to offer one of  
2.22 the following methods of settlement:
- 2.23 (a) to assume all costs, including reasonable towing costs,  
2.24 for the satisfactory repair of the motor vehicle. Satisfactory  
2.25 repair includes repair of both obvious and hidden damage as  
2.26 caused by the claim incident. This assumption of cost may be  
2.27 reduced by applicable policy provision; or  
2.28 (b) to offer a cash settlement sufficient to pay for  
2.29 satisfactory repair of the vehicle. Satisfactory repair  
2.30 includes repair of obvious and hidden damage caused by the claim  
2.31 incident, and includes reasonable towing costs;
- 2.32 (3) regardless of whether the loss was total or partial, in  
2.33 the event that a damaged vehicle of an insured cannot be safely  
2.34 driven, failing to exercise the right to inspect automobile  
2.35 damage prior to repair within five business days following  
2.36 receipt of notification of claim. In other cases the inspection  
3.1 must be made in 15 days;
- 3.2 (4) regardless of whether the loss was total or partial,  
3.3 requiring unreasonable travel of a claimant or insured to  
3.4 inspect a replacement automobile, to obtain a repair estimate,  
3.5 to allow an insurer to inspect a repair estimate, to allow an  
3.6 insurer to inspect repairs made pursuant to policy requirements,  
3.7 or to have the automobile repaired;
- 3.8 (5) regardless of whether the loss was total or partial, if  
3.9 loss of use coverage exists under the insurance policy, failing  
3.10 to notify an insured at the time of the insurer's acknowledgment  
3.11 of claim, or sooner if inquiry is made, of the fact of the  
3.12 coverage, including the policy terms and conditions affecting  
3.13 the coverage and the manner in which the insured can apply for  
3.14 this coverage;
- 3.15 (6) regardless of whether the loss was total or partial,  
3.16 failing to include the insured's deductible in the insurer's  
3.17 demands under its subrogation rights. Subrogation recovery must  
3.18 be shared at least on a proportionate basis with the insured,  
3.19 unless the deductible amount has been otherwise recovered by the  
3.20 insured, except that when an insurer is recovering directly from  
3.21 an uninsured third party by means of installments, the insured  
3.22 must receive the full deductible share as soon as that amount is  
3.23 collected and before any part of the total recovery is applied  
3.24 to any other use. No deduction for expenses may be made from  
3.25 the deductible recovery unless an attorney is retained to  
3.26 collect the recovery, in which case deduction may be made only  
3.27 for a pro rata share of the cost of retaining the attorney. An  
3.28 insured is not bound by any settlement of its insurer's  
3.29 subrogation claim with respect to the deductible amount, unless  
3.30 the insured receives, as a result of the subrogation settlement,  
3.31 the full amount of the deductible. Recovery by the insurer and  
3.32 receipt by the insured of less than all of the insured's  
3.33 deductible amount does not affect the insured's rights to  
3.34 recover any unreimbursed portion of the deductible from parties  
3.35 liable for the loss;
- 3.36 (7) requiring as a condition of payment of a claim that  
4.1 repairs to any damaged vehicle must be made by a particular  
4.2 contractor or repair shop or that parts, other than window  
4.3 glass, must be replaced with parts other than original equipment  
4.4 parts or engaging in any act or practice of intimidation,  
4.5 coercion, threat, incentive, or inducement for or against an  
4.6 insured to use a particular contractor or repair shop. At the  
4.7 time a claim is reported, the insurer must provide the following  
4.8 advisory to the insured or claimant:

4.9 "Minnesota law gives you the right to choose a repair shop  
4.10 to fix your vehicle. Your policy will cover the reasonable  
4.11 costs of repairing your vehicle to its pre-accident condition no  
4.12 matter where you have repairs made. Have you selected a repair  
4.13 shop or would you like a referral?"

4.14 After an insured has indicated that the insured has  
4.15 selected a repair shop, the insurer must cease all efforts to  
4.16 influence the insured's or claimant's choice of repair shop;

4.17 (8) where liability is reasonably clear, failing to inform  
4.18 the claimant in an automobile property damage liability claim  
4.19 that the claimant may have a claim for loss of use of the  
4.20 vehicle;

4.21 (9) failing to make a good faith assignment of comparative  
4.22 negligence percentages in ascertaining the issue of liability;

4.23 (10) failing to pay any interest required by statute on  
4.24 overdue payment for an automobile personal injury protection  
4.25 claim;

4.26 (11) if an automobile insurance policy contains either or  
4.27 both of the time limitation provisions as permitted by section  
4.28 65B.55, subdivisions 1 and 2, failing to notify the insured in  
4.29 writing of those limitations at least 60 days prior to the  
4.30 expiration of that time limitation;

4.31 (12) if an insurer chooses to have an insured examined as  
4.32 permitted by section 65B.56, subdivision 1, failing to notify  
4.33 the insured of all of the insured's rights and obligations under  
4.34 that statute, including the right to request, in writing, and to  
4.35 receive a copy of the report of the examination;

4.36 (13) failing to provide, to an insured who has submitted a  
5.1 claim for benefits described in section 65B.44, a complete copy  
5.2 of the insurer's claim file on the insured, excluding internal  
5.3 company memoranda, all materials that relate to any insurance  
5.4 fraud investigation, materials that constitute attorney  
5.5 work-product or that qualify for the attorney-client privilege,  
5.6 and medical reviews that are subject to section 145.64, within  
5.7 ten business days of receiving a written request from the  
5.8 insured. The insurer may charge the insured a reasonable  
5.9 copying fee. This clause supersedes any inconsistent provisions  
5.10 of sections 72A.49 to 72A.505;

5.11 (14) if an automobile policy provides for the adjustment or  
5.12 settlement of an automobile loss due to damaged window glass,  
5.13 failing to provide payment to the insured's chosen vendor based  
5.14 on a competitive price that is fair and reasonable within the  
5.15 local industry at large.

5.16 Where facts establish that a different rate in a specific  
5.17 geographic area actually served by the vendor is required by  
5.18 that market, that geographic area must be considered. This  
5.19 clause does not prohibit an insurer from recommending a vendor  
5.20 to the insured or from agreeing with a vendor to perform work at  
5.21 an agreed-upon price, provided, however, that before  
5.22 recommending a vendor, the insurer shall offer its insured the  
5.23 opportunity to choose the vendor. If the insurer recommends a  
5.24 vendor, the insurer must also provide the following advisory:

5.25 "Minnesota law gives you the right to go to any glass  
5.26 vendor you choose, and prohibits me from pressuring you to  
5.27 choose a particular vendor.";

5.28 (15) requiring that the repair or replacement of motor  
5.29 vehicle glass and related products and services be made in a  
5.30 particular place or shop or by a particular entity, or by  
5.31 otherwise limiting the ability of the insured to select the  
5.32 place, shop, or entity to repair or replace the motor vehicle

- 5.33 glass and related products and services; or
  - 5.34 (16) engaging in any act or practice of intimidation,
  - 5.35 coercion, threat, incentive, or inducement for or against an
  - 5.36 insured to use a particular company or location to provide the
  - 6.1 motor vehicle glass repair or replacement services or products.
  - 6.2 For purposes of this section, a warranty shall not be considered
  - 6.3 an inducement or incentive.
  - 6.4 Sec. 2. [EFFECTIVE DATE.]
  - 6.5 Section 1 is effective the day following final enactment.
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