
HOUSE BILL 2065

State of Washington

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By Representatives Kastama, Regala, Boldt, Anderson, Sullivan, Blalock, O'Brien, Gombosky, Dickerson, Costa, Thompson, Keiser, Conway and Tokuda

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1 AN ACT Relating to consumer choices in automotive insurance and
2 repairs; amending RCW 48.30A.015; adding new sections to chapter 48.30
3 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds and declares that:

6 (1) The state of Washington regulates the insurance industry and
7 has a significant interest in upholding the fiduciary obligation of
8 insurers to their insured, defining methods of competition, and
9 eliminating business practices that are unfair or deceptive;

10 (2) The state of Washington recognizes the existence of
11 circumstances in which this fiduciary obligation may come into conflict
12 with the insurers' interests in holding down claim processing and
13 payment costs of both third and first-party claims for automobile
14 losses and that these conflicts are particularly prevalent in first-
15 party claim situations where the insurer directs and controls the
16 repair of the automobile without exercising its contract right of
17 repair;

18 (3) The state of Washington recognizes that improved and accurate
19 communications between insurers and first and third-party claimants

1 will increase consumer confidence, reduce the likelihood of disputes,
2 and promote fair and nondeceptive practices, thereby enhancing the
3 safety and value of automobiles;

4 (4) The state of Washington further recognizes that cost factors,
5 and proliferating use of nonoriginal equipment manufacturer automotive
6 body and glass parts, in the repair of automobiles threatens the
7 welfare and property interests of the people of the state of Washington
8 who are dependent on the safe and correct repair of automobiles;

9 (5) The state of Washington has determined that it is in the
10 interests of both insurance companies and insurance consumers to
11 specify the obligations and rights of both. Delineation of rights and
12 obligation along with full disclosure of information will allow for the
13 protection of insurers and claimants in insurance-related automotive
14 repair in the state of Washington; and

15 (6) This act shall not be construed to alter, amend, or delete
16 existing administrative law as codified in WAC 284-30-300 through
17 284-30-410, including WAC 284-30-390. The insurance commissioner may
18 adopt rules consistent with the intent of sections 1 through 6 of this
19 act. It is the intent of the legislature that sections 1 through 6 of
20 this act be read to incorporate existing statutory, administrative, and
21 case law in protecting consumer rights under automotive insurance
22 policies.

23 NEW SECTION. **Sec. 2.** (1) The definitions in this section apply
24 throughout sections 1 through 6 of this act unless the context clearly
25 requires otherwise.

26 (a) "Agent" means an individual, corporation, association,
27 partnership, or other legal entity authorized to represent an insurer
28 with respect to a claim.

29 (b) "Claimant" means either a first-party claimant, a third-party
30 claimant, or both, and includes the claimant's designated legal
31 representative and a member of the claimant's immediate family
32 designated by the claimant.

33 (c) "First-party claimant" means an individual, corporation,
34 association, partnership, or other legal entity asserting a right to
35 payment under an insurance policy or insurance contract arising out of
36 the occurrence of the contingency or loss covered by the policy or
37 contract.

1 (d) "Insurance policy" or "insurance contract" mean a contract of
2 insurance, indemnity, suretyship, or annuity issued, proposed for
3 issuance, or intended for issuance by an insurer.

4 (e) "Insurer" means an individual, corporation, association,
5 partnership, reciprocal exchange, interinsurer, Lloyds insurer,
6 fraternal mutual insurer, fraternal mutual life insurer, and any other
7 legal entity engaged in the business of insurance, authorized or
8 licensed to issue or who issues an insurance policy or insurance
9 contract in this state. "Insurer" does not include health care service
10 contractors, as defined in RCW 48.44.010, and health maintenance
11 organizations, as defined in RCW 48.46.020.

12 (f) "Investigation" means all activities of an insurer directly or
13 indirectly related to the determination of liabilities under coverages
14 afforded by an insurance policy or insurance contract.

15 (g) "Notification of claim" means a notification, whether in
16 writing or other means acceptable under the terms of an insurance
17 policy or insurance contract, to an insurer or its agent, by a
18 claimant, that reasonably apprises the insurer of the facts pertinent
19 to a claim.

20 (h) "Third-party claimant" means an individual, corporation,
21 association, partnership, or other legal entity asserting a claim
22 against an individual, corporation, association, partnership, or other
23 legal entity insured under an insurance policy or insurance contract of
24 an insurer.

25 (2) The definitions in RCW 46.71.011 apply throughout sections 1
26 through 6 of this act.

27 NEW SECTION. **Sec. 3.** An insurer may not require, direct, or
28 otherwise induce a third-party claimant, or cause a third-party
29 claimant to be required, directed, or otherwise induced, to utilize a
30 specific automotive repair facility or one from a list of automotive
31 repair facilities maintained or prepared by the insurer in effecting
32 automotive repairs under the claimant's third-party claim.

33 NEW SECTION. **Sec. 4.** (1) For first-party claims, if the insurer
34 directs, suggests, or recommends the use of a specific automobile
35 repair facility, allows for selection of one from a list of automobile
36 repair facilities maintained or prepared by the insurer, or elects to
37 exercise its contract right of repair under policy provisions existing

1 at the time of the claim, the insurer shall notify the insured of the
2 following information, in the following form with a minimum of ten-
3 point type:

4 YOU ARE NOT REQUIRED TO HAVE YOUR VEHICLE REPAIRED BY A PERSON
5 OR BUSINESS WE SELECT OR RECOMMEND UNLESS WE NOTIFY YOU IN
6 WRITING THAT WE HAVE INVOKED OUR CONTRACT RIGHT TO TAKE AND
7 REPAIR YOUR VEHICLE AT OUR EXPENSE.

8 (2) After notifying the insured in writing of its election to
9 exercise its contract right to repair, the insurer may:

10 (a) Require, direct, suggest, or otherwise induce its first-party
11 claimant to utilize a specific automotive repair service or a repair
12 service from a list of repair facilities the insurer prepares or
13 maintains; or

14 (b) Otherwise control or direct the repair of the first-party
15 claimant's automobile through establishment, control, or limitations on
16 the cost of repair.

17 (3) In all cases in which an insurer controls or directs the repair
18 of a first-party claimant's automobile, as set forth in subsections (1)
19 and (2) of this section, the insurer:

20 (a) Shall obtain written verification that the first-party claimant
21 has received written notification of labor costs and specifications of
22 all parts to be used in the repair of the automobile, including, but
23 not limited to, all salvage, nonoriginal equipment manufacturer or
24 aftermarket body and glass parts to be used in the repair of the
25 automobile;

26 (b) Is strictly liable for all subsequent repairs or loss in value
27 to the automobile occasioned by the use of salvage, nonoriginal
28 equipment manufacturer or aftermarket body or glass parts; and

29 (c) Is strictly liable for all subsequent, consequential damages
30 resulting from the use of salvage, nonoriginal equipment manufacturer
31 or aftermarket body or glass parts.

32 NEW SECTION. **Sec. 5.** For first-party claims in which the insurer,
33 under policy provisions in existence at the time of the claim, does not
34 elect to exercise its right of repair, the insurer:

35 (1) May not require, direct, or otherwise induce the first-party
36 claimant, or cause the first-party claimant to be required, directed,
37 or otherwise induced, to utilize the services of a specific automotive

1 repair facility or one from a list of automotive repair facilities
2 maintained or prepared by the insurer;

3 (2) May not require, direct, or otherwise induce the first-party
4 claimant, or cause the first-party claimant to be required, directed,
5 or otherwise induced, to accept nonoriginal equipment manufacturer or
6 aftermarket body or glass parts or parts salvaged from another vehicle
7 in the repair of the claimant's automobile;

8 (3) Shall:

9 (a) Make a settlement offer on the automobile property damage claim
10 based on an amount equal to or greater than the lesser of two or more
11 estimates provided by the first-party claimant; or

12 (b) In cases in which the insurer does not accept the estimates
13 provided by the first-party claimant and seeks remedy under the policy
14 provisions in existence at the time of the claim, provide to the
15 insured a written estimate including, but not limited to the following
16 information:

17 (i) Parts and labor costs using the terminology of the automotive
18 repair act, chapter 46.71 RCW; and

19 (ii) A clear statement as to the use of nonoriginal equipment
20 manufacturer or aftermarket body or glass parts or parts salvaged from
21 another vehicle in the proposed repair of the automobile; and

22 (c) Include the following statement in not less than ten-point
23 type:

24 USE OF NONORIGINAL EQUIPMENT MANUFACTURER OR AFTERMARKET BODY
25 OR GLASS PARTS OR PARTS SALVAGED FROM ANOTHER AUTOMOBILE ARE
26 NOT WARRANTED BY THE MANUFACTURER OF YOUR AUTOMOBILE AND MAY
27 VOID YOUR MANUFACTURER'S WARRANTY. USE OF NONORIGINAL
28 EQUIPMENT MANUFACTURER OR AFTERMARKET BODY OR GLASS PARTS OR
29 PARTS SALVAGED FROM ANOTHER AUTOMOBILE MAY VIOLATE THE
30 PROVISIONS OF YOUR INSURANCE POLICY BY FAILING TO RESTORE YOUR
31 AUTOMOBILE TO PREACCIDENT CONDITION IN TERMS OF VALUE,
32 APPEARANCE, AND SAFETY.

33 NEW SECTION. **Sec. 6.** The insurer may not engage in
34 anticompetitive activities, including, but not limited to:

35 (1) The use of unilateral negotiating tactics to force or coerce
36 automotive repair facilities to artificially reduce or restrict their
37 cost for automotive repairs;

1 (2) Engaging, with automotive repair services, in the use of
2 multiple labor price or parts lists; and

3 (3) Sharing or directing the use of information on cost of repair
4 with other insurance companies or intermediary services with the intent
5 of reducing or restricting the cost of automotive repairs.

6 NEW SECTION. **Sec. 7.** The legislature finds that the practices
7 covered by sections 1 through 6 of this act and RCW 48.30A.015 are
8 matters vitally affecting the public interest for the purpose of
9 applying the consumer protection act, chapter 19.86 RCW. A violation
10 of sections 1 through 6 of this act or RCW 48.30A.015 is not reasonable
11 in relation to the development and preservation of insurance and
12 business practices and is an unfair or deceptive act in trade or
13 commerce and an unfair method of competition for the purpose of
14 applying the consumer protection act, chapter 19.86 RCW. However, in
15 an action under chapter 19.86 RCW concerning a violation of RCW
16 48.30A.015, a violation may not be found if the defendant proves by a
17 preponderance of the evidence a defense under RCW 48.30A.020.

18 **Sec. 8.** RCW 48.30A.015 and 1995 c 285 s 3 are each amended to read
19 as follows:

20 (1) It is unlawful for a person:

21 (a) Knowing that the payment is for the referral of a claimant to
22 a service provider, either to accept payment from a service provider
23 or, being a service provider, to pay another; or

24 (b) To provide or claim or represent to have provided services to
25 a claimant, knowing the claimant was referred in violation of (a) of
26 this subsection.

27 (2) It is unlawful for a service provider to engage in a regular
28 practice of waiving, rebating, giving, paying, or offering to waive,
29 rebate, give, or pay all or any part of a claimant's casualty or
30 property insurance deductible.

31 (3) Section 7 of this act applies to this section.

32 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act are each
33 added to chapter 48.30 RCW.

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