

Representative Todd E. Kiser proposes the following substitute bill:

MOTOR VEHICLE REPAIRS - CONSUMER

RIGHTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Todd E. Kiser

LONG TITLE

General Description:

This bill modifies the Insurance Code and the Motor Vehicle Business Regulation Act by amending provisions relating to consumer rights in motor vehicle repairs.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ provides that an insurer may not:
 - require an insured to have the insured's vehicle repaired at a specific body shop;
 - require more than two estimates to repair a damaged motor vehicle as a condition of payment for a claim; or
 - demand or take discounts for parts or labor that are not reflected in a repair estimate or a supplement to a repair estimate that is agreed on by the insurer;
- ▶ provides that an insurer may:
 - write or secure an additional damaged motor vehicle repair estimate at the insurer's own expense;
 - recommend a body shop and provide education on the guarantees and other economic advantages of that recommendation;
 - provide a list of certain body shops in the geographic area; or



- 26 • limit payment for the repair of a motor vehicle to a reasonable amount for
- 27 competitively priced parts or labor;
- 28 ▶ provides procedures for establishing a competitive labor rate;
- 29 ▶ requires an owner of a vehicle to make the vehicle available to the insurer for
- 30 inspection at the insurer's request;
- 31 ▶ provides that if an insurer violates the provisions, it is an unfair claims settlement
- 32 practice;
- 33 ▶ provides that a body shop, towing service, or dealer may not require a vehicle owner
- 34 to repair a vehicle at a specific body shop as a condition of rendering service;
- 35 ▶ requires a body shop to post certain notices in a conspicuous place;
- 36 ▶ requires a body shop and an insurer to provide certain notices on repair estimates;
- 37 and
- 38 ▶ provides that if a body shop violates the provisions, it is a class B misdemeanor and
- 39 a civil violation and may result in civil damages of up to \$1,000 per occurrence.

40 **Monies Appropriated in this Bill:**

41 None

42 **Other Special Clauses:**

43 This bill takes effect on July 1, 2005.

44 **Utah Code Sections Affected:**

45 AMENDS:

46 **31A-26-303**, as last amended by Chapter 91, Laws of Utah 1987

47 **41-3-702**, as last amended by Chapter 334, Laws of Utah 2003

48 ENACTS:

49 **31A-22-321**, Utah Code Annotated 1953

50 **31A-22-322**, Utah Code Annotated 1953

51 **31A-22-323**, Utah Code Annotated 1953

52 **31A-22-324**, Utah Code Annotated 1953

53 **41-3-901**, Utah Code Annotated 1953

54 **41-3-902**, Utah Code Annotated 1953

55 **41-3-903**, Utah Code Annotated 1953

56 **41-3-904**, Utah Code Annotated 1953

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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-22-321** is enacted to read:

31A-22-321. Title.

Sections 31A-22-321 through 31A-22-324 are known as the "Consumer Vehicle Repair Insurance Claims Act."

Section 2. Section **31A-22-322** is enacted to read:

31A-22-322. Definitions.

As used in Sections 31A-22-322 through 31A-22-324:

(1) "Betterment" occurs when the repair of a vehicle or vehicle part improves the condition and value of that property in comparison to its pre-loss condition.

(2) "Body shop" has the same meaning as defined in Section 41-3-102.

(3) "Insurer" means an insurance company and any person authorized to represent the insurer with respect to a claim.

Section 3. Section **31A-22-323** is enacted to read:

31A-22-323. Repair of motor vehicles.

(1) An insurer may not:

(a) require an insured to have the insured's vehicle repaired at a specific body shop;

(b) require an owner of a vehicle to obtain more than two estimates to repair a damaged motor vehicle as a condition of payment for a claim; or

(c) demand or take a discount from the body shop for parts or labor used to repair a motor vehicle that is not reflected in a repair estimate or a supplement to a repair estimate agreed on by the insurer.

(2) An insurer may:

(a) write or secure additional estimates to repair a damaged motor vehicle at the insurer's own expense;

(b) recommend a body shop and provide education on the guarantees and other economic advantages of using a recommended body shop;

(c) provide a list of:

(i) body shops in the geographic area; or

(ii) names of body shops in the geographic area that meet or exceed industry standards

88 of quality, service, or safety; or

89 (d) limit payment for the repair of a motor vehicle to a reasonable amount for
90 competitively priced parts or labor.

91 (3) An owner of a vehicle shall make the vehicle available to the insurer for inspection
92 at the insurer's request.

93 (4) If an insurer requires that payment for repair of a motor vehicle is based on a
94 competitively priced labor rate under Subsection (2)(d), the competitive labor rate may be
95 established by:

96 (a) a generally accepted insurer based methodology; or

97 (b) a survey or surveys of a majority of the body shops in the geographic area that
98 determine the fair and reasonable labor rate for similar services.

99 (5) If a competitive labor rate is challenged, an insurer shall not disclose individual
100 labor rates provided by a body shop but shall include a description of the methodology used to
101 establish the geographic competitive labor rate.

102 (6) A violation of this section is an unfair claims settlement practice under Section
103 31A-26-303.

104 Section 4. Section **31A-22-324** is enacted to read:

105 **31A-22-324. Insurer notice requirements.**

106 (1) An insurer shall print on the front page of any motor vehicle repair estimate in 12
107 point, all caps type or larger:

108 "A DEALER, BODY SHOP, TOWING SERVICE, OR INSURANCE COMPANY
109 MAY NOT REQUIRE YOU TO HAVE YOUR VEHICLE REPAIRED AT A SPECIFIC
110 BODY SHOP."

111 (2) An insurer shall:

112 (a) clearly identify any part or labor that is subject to betterment on a repair estimate;
113 and

114 (b) notify a motor vehicle owner verbally or in writing if the insurer does not agree to
115 pay for any betterment.

116 (3) A violation of this section is an unfair claims settlement practice under Section
117 31A-26-303.

118 Section 5. Section **31A-26-303** is amended to read:

119 **31A-26-303. Unfair claim settlement practices.**

120 (1) No insurer or person representing an insurer may engage in any unfair claim
121 settlement practice under Subsections (2), (3), and (4).

122 (2) Each of the following acts is an unfair claim settlement practice:

123 (a) knowingly misrepresenting material facts or the contents of insurance policy
124 provisions at issue in connection with a claim under an insurance contract; however, this
125 provision does not include the failure to disclose information;

126 (b) attempting to use a policy application which was altered by the insurer without
127 notice to, or knowledge, or consent of, the insured as the basis for settling or refusing to settle a
128 claim; or

129 (c) failing to settle a claim promptly under one portion of the insurance policy
130 coverage, where liability and the amount of loss are reasonably clear, in order to influence
131 settlements under other portions of the insurance policy coverage, but this Subsection (2)(c)
132 applies only to claims made by persons in direct privity of contract with the insurer.

133 (3) Each of the following is an unfair claim settlement practice if committed or
134 performed with such frequency as to indicate a general business practice by an insurer or
135 persons representing an insurer:

136 (a) failing to acknowledge and act promptly upon communications about claims under
137 insurance policies;

138 (b) failing to adopt and implement reasonable standards for the prompt investigation
139 and processing of claims under insurance policies;

140 (c) compelling insureds to institute litigation to recover amounts due under an
141 insurance policy by offering substantially less than the amounts ultimately recovered in actions
142 brought by those insureds when the amounts claimed were reasonably near to the amounts
143 recovered;

144 (d) failing, after payment of a claim, to inform insureds or beneficiaries, upon request
145 by them, of the coverage under which payment was made;

146 (e) failing to promptly provide to the insured a reasonable explanation of the basis for
147 denial of a claim or for the offer of a compromise settlement;

148 (f) appealing from substantially all arbitration awards in favor of insureds for the
149 purpose of compelling them to accept settlements or compromises for less than the amount

150 awarded in arbitration;

151 (g) delaying the investigation or payment of claims by requiring an insured, claimant,
152 or the physician of either to submit a preliminary claim report and then requiring the
153 subsequent submission of formal proof of loss forms which contain substantially the same
154 information; [~~or~~]

155 (h) not attempting in good faith to effectuate a prompt, fair, and equitable settlement of
156 claims in which liability is reasonably clear[-]; or

157 (i) violating a provision of Section 31A-22-323 or 31A-22-324.

158 (4) The commissioner may define by rule, acts or general business practices which are
159 unfair claim settlement practices, after a finding that those practices are misleading, deceptive,
160 unfairly discriminatory, overreaching, or an unreasonable restraint on competition.

161 (5) This section does not create any private cause of action.

162 Section 6. Section **41-3-702** is amended to read:

163 **41-3-702. Civil penalty for violation.**

164 (1) The following are civil violations under this chapter and are in addition to criminal
165 violations under this chapter:

166 (a) Level I:

167 (i) failure to display business license;

168 (ii) failure to surrender license of salesperson because of termination, suspension, or
169 revocation;

170 (iii) failure to maintain a separation from nonrelated motor vehicle businesses at
171 licensed locations;

172 (iv) issuing a temporary permit improperly;

173 (v) failure to maintain records;

174 (vi) selling a new motor vehicle to a nonfranchised dealer or leasing company without
175 licensing the motor vehicle;

176 (vii) special plate violation; and

177 (viii) failure to maintain a sign at principal place of business.

178 (b) Level II:

179 (i) failure to report sale;

180 (ii) dismantling without a permit;

181 (iii) manufacturing without meeting construction or vehicle identification number
182 standards;

183 (iv) withholding customer license plates; or

184 (v) selling a motor vehicle on consecutive days of Saturday and Sunday.

185 (c) Level III:

186 (i) operating without a principal place of business;

187 (ii) selling a new motor vehicle without holding the franchise;

188 (iii) crushing a motor vehicle without proper evidence of ownership;

189 (iv) selling from an unlicensed location;

190 (v) altering a temporary permit;

191 (vi) refusal to furnish copies of records;

192 (vii) assisting an unlicensed dealer or salesperson in sales of motor vehicles; and

193 (viii) advertising violation.

194 (2) (a) The schedule of civil penalties for violations of Subsection (1) is:

195 (i) Level I: \$25 for the first offense, \$100 for the second offense, and \$250 for the third
196 and subsequent offenses;

197 (ii) Level II: \$100 for the first offense, \$250 for the second offense, and \$1,000 for the
198 third and subsequent offenses; and

199 (iii) Level III: \$250 for the first offense, \$1,000 for the second offense, and \$5,000 for
200 the third and subsequent offenses.

201 (b) When determining under this section if an offense is a second or subsequent
202 offense, only prior offenses committed within the 12 months prior to the commission of the
203 current offense may be considered.

204 (3) The following are civil violations in addition to criminal violations under Section
205 41-1a-1008:

206 (a) knowingly selling a salvage vehicle, as defined in Section 41-1a-1001, without
207 disclosing that the salvage vehicle has been repaired or rebuilt;

208 (b) knowingly making a false statement on a vehicle damage disclosure statement, as
209 defined in Section 41-1a-1001; or

210 (c) fraudulently certifying that a damaged motor vehicle is entitled to an unbranded
211 title, as defined in Section 41-1a-1001, when it is not.

212 (4) The civil penalty for a violation under Subsection (3) is:
213 (a) not less than \$1,000, or treble the actual damages caused by the person, whichever
214 is greater; and

215 (b) reasonable attorneys' fees and costs of the action.

216 (5) The following are civil violations in addition to the criminal violations under
217 Sections 41-3-903 and 41-3-904:

218 (a) requiring an owner of a damaged vehicle to repair the vehicle at a specific body
219 shop as a condition of rendering service under Section 41-3-903; or

220 (b) a body shop not providing notice as required under Section 41-3-904.

221 (6) The penalty for a civil violation under Subsection (5) may result in civil damages of
222 up to \$1,000 per occurrence.

223 [~~5~~] (7) A civil action may be maintained by a purchaser, the owner of a vehicle, or by
224 the administrator.

225 Section 7. Section **41-3-901** is enacted to read:

226 **Part 9. Consumer Rights for Repair of Damaged Vehicles**

227 **41-3-901. Title.**

228 This part is known as the "Consumer Rights for Repair of Damaged Vehicles."

229 Section 8. Section **41-3-902** is enacted to read:

230 **41-3-902. Definitions.**

231 As used in this section:

232 (1) "Betterment" occurs when the repair of a vehicle or vehicle part improves the
233 condition and value of that property in comparison to its pre-loss condition.

234 (2) "Insurer" has the same meaning as defined in Section 31A-22-322.

235 Section 9. Section **41-3-903** is enacted to read:

236 **41-3-903. Consumer may select a body shop.**

237 (1) An owner of a damaged vehicle may select the body shop of the owner's choice to
238 repair the damaged vehicle.

239 (2) A body shop, towing service, dealer, or its employee, agent, or representative may
240 not require an owner of a damaged vehicle to repair the vehicle at a specific body shop as a
241 condition of rendering service.

242 Section 10. Section **41-3-904** is enacted to read:

243 **41-3-904. Body shop notice requirements.**

244 (1) A body shop shall print on the front page of any vehicle repair estimate in 12 point,
245 all caps type or larger:

246 "A DEALER, BODY SHOP, TOWING SERVICE, OR INSURANCE COMPANY
247 MAY NOT REQUIRE YOU TO HAVE YOUR VEHICLE REPAIRED AT A SPECIFIC
248 BODY SHOP."

249 (2) A body shop shall post in a conspicuous public place the applicable labor rates for
250 vehicle repairs.

251 (3) A body shop shall:

252 (a) clearly identify any part or labor that is subject to betterment on a repair estimate;

253 and

254 (b) notify a vehicle owner verbally or in writing if an insurer has not agreed to pay for
255 any betterment.

256 **Section 11. Effective date.**

257 This bill takes effect on July 1, 2005.