

By: Talton

H.B. No. 1219

A BILL TO BE ENTITLED

AN ACT

1
2 relating to settlement of certain claims under an auto insurance
3 policy.

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

5 SECTION 1. Article 5.07-1(b), Insurance Code, is amended to
6 read as follows:

7 (b) In connection with the repair of damage to a motor
8 vehicle covered under an auto insurance policy, an insurer, an
9 employee of an insurer, an agent of an insurer, a solicitor of
10 insurance for an insurer, an insurance adjuster, or an entity that
11 employs an insurance adjuster may not:

12 (1) solicit or accept a referral fee or gratuity in
13 exchange for referring a beneficiary or third-party claimant to a
14 repair person or facility to repair the damage;

15 (2) state or suggest, either orally or in writing, to a
16 beneficiary that a specific repair person or facility or a repair
17 person or facility identified on a preferred list compiled by an
18 insurer ~~must~~ be used by a beneficiary in order for the damage
19 repair or parts replacement to be covered by the policy; or

20 (3) restrict a beneficiary's or third-party claimant's
21 right to choose a repair person or facility by requiring the
22 beneficiary or third-party claimant to travel an unreasonable
23 distance to repair the damage.

24 SECTION 2. Subchapter A, Chapter 5, Insurance Code, is

1 amended by adding Article 5.07-2 to read as follows:

2 Art. 5.07-2. PENALTY FOR CERTAIN VIOLATIONS. (a) A
3 third-party claimant who has incurred actual damages as a result of
4 an insurer's violation of Article 5.07-1(g) of this code may file a
5 complaint with the department setting forth a claim for the
6 damages.

7 (b) Not later than the 90th day after the date the complaint
8 is filed, the department shall:

9 (1) require the insurer to pay the claimant's actual
10 damages, not to exceed \$5,000; or

11 (2) find that the insurer did not violate Article
12 5.07-1(g) of this code or that actual damages were not incurred by
13 the claimant.

14 (c) If the department does not act under Subsection (b)
15 before the 91st day after the date the complaint is filed, the
16 claimant may bring an action to recover the damages.

17 (d) The limitation period applicable to the action is tolled
18 from the date the complaint is filed until the 91st day after that
19 date.

20 (e) A claimant who prevails in an action under Subsection
21 (c) is entitled to recover:

22 (1) the claimant's actual damages, not to exceed
23 \$5,000;

24 (2) attorney's fees in the manner described by Chapter
25 38, Civil Practice and Remedies Code; and

26 (3) court costs.

27 SECTION 3. Article 5.07-2, Insurance Code, as added by this

1 Act, applies only to a violation of Article 5.07-1(g), Insurance
2 Code, that occurs on or after the effective date of this Act. A
3 violation of Article 5.07-1(g), Insurance Code, that occurs before
4 the effective date of this Act is governed by the law as it existed
5 immediately before the effective date of this Act, and that law is
6 continued in effect for that purpose.

7 SECTION 4. Section 1 of this Act takes effect September 1,
8 2005.

9 SECTION 5. Except as otherwise provided by this Act, this
10 Act takes effect immediately if it receives a vote of two-thirds of
11 all the members elected to each house, as provided by Section 39,
12 Article III, Texas Constitution. If this Act does not receive the
13 vote necessary for immediate effect, this Act takes effect
14 September 1, 2005.