

BILL ANALYSIS

C.S.H.B. 3804
By: Clardy
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have expressed concern over restrictive automobile insurance policies. C.S.H.B. 3804 seeks to address this issue by providing for certain prohibitions on insurer practices, including limiting coverage, with respect to the repair of motor vehicles.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3804 amends the Insurance Code to prohibit an insurer, an employee or agent of an insurer, an insurance adjuster, or an entity that employs an insurance adjuster, under an automobile insurance policy that is delivered, issued for delivery, or renewed in Texas, from directly or indirectly limiting the insurer's coverage under a policy covering damage to a motor vehicle by intimidating, coercing, or threatening the beneficiary to induce the beneficiary to use a particular repair person or facility or by offering an incentive or inducement, other than a warranty issued by the insurer or a repair person or facility, for the beneficiary to use a particular repair person or facility. The bill extends to an employee or agent of an insurer, an insurance adjuster, and an entity that employs an insurance adjuster the prohibition against directly or indirectly limiting the insurer's coverage under such a policy by limiting the beneficiary of the policy from selecting a repair person or facility to repair damage to the vehicle, specifies that such limitation is a limitation on the beneficiary of the policy from selecting a repair person or facility to repair damage to the vehicle to the vehicle's condition before the damage occurred in order for the beneficiary to obtain the repair without owing any out-of-pocket cost other than the deductible, and removes the exception to such prohibition as provided by rules adopted by the commissioner of insurance. The bill extends to an employee or agent of an insurer, an insurance adjuster, and an entity that employs an insurance adjuster the prohibitions against, in settling a liability claim by a third party against an insured for property damage claimed by the third party, requiring the third-party claimant to have repairs made by a particular repair person or facility or to use a particular brand, type, kind, age, vendor, supplier, or condition of parts or products and specifies that such use is to repair damage to the vehicle to the vehicle's condition before the damage occurred. The bill prohibits an insurer, an employee or agent of an insurer, an insurance adjuster, or an entity that employs an insurance adjuster, in settling such a claim, from intimidating, coercing, or threatening the third-party claimant to induce the claimant to use a particular repair person or facility or from offering an incentive or inducement, other than a warranty issued by the insurer or a repair person or facility, for the third-party claimant to use a

particular repair person or facility.

C.S.H.B. 3804 prohibits an insurer, an employee or agent of an insurer, an insurance adjuster, or an entity that employs an insurance adjuster, in connection with the repair of damage to a motor vehicle covered under an automobile insurance policy, from disregarding a repair operation or cost identified by an estimating system, including the system's procedural pages, selected by the insurer for use in writing the automobile repair estimate for the motor vehicle. The bill, for purposes of the prohibition against an insurer, an employee or agent of an insurer, an insurance adjuster, or an entity that employs an insurance adjuster restricting in connection with the repair of damage to a motor vehicle covered under such a policy the right of a beneficiary or third-party claimant to choose a repair person or facility by requiring the beneficiary or third-party claimant to travel a certain distance to repair the damage, replaces the specification of such distance from an unreasonable distance to a distance considered inconvenient by a beneficiary or third-party claimant.

C.S.H.B. 3804 excludes from the term "repair person or facility," for purposes of policy provisions and forms for automobile insurance regarding the repair of motor vehicles, a person who exclusively provides automobile glass replacement, glass repair services, or glass products. The bill applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2018.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3804 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter G, Chapter 1952, Insurance Code, is amended.

SECTION 2. Section 1952.301, Insurance Code, is amended to read as follows:

Sec. 1952.301. LIMITATION ON PARTS, PRODUCTS, OR REPAIR PERSONS OR FACILITIES PROHIBITED. (a) Except as provided by rules adopted by the commissioner, under an automobile insurance policy that is delivered, issued for delivery, or renewed in this state, an insurer may not directly or indirectly limit the insurer's coverage under a policy covering damage to a motor vehicle by[:

~~(1)~~ specifying the brand, type, kind, age, vendor, supplier, or condition of parts or products that may be used to repair the vehicle. ~~;~~ ~~]~~

(a-1) Under an automobile insurance policy that is delivered, issued for delivery, or renewed in this state, an insurer, an

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Section 1952.301, Insurance Code, is amended to read as follows:

Sec. 1952.301. LIMITATION ON PARTS, PRODUCTS, OR REPAIR PERSONS OR FACILITIES PROHIBITED. (a) Except as provided by rules adopted by the commissioner, under an automobile insurance policy that is delivered, issued for delivery, or renewed in this state, an insurer may not directly or indirectly limit the insurer's coverage under a policy covering damage to a motor vehicle by[:

~~(1)~~ specifying the brand, type, kind, age, vendor, supplier, or condition of parts or products that may be used to repair the vehicle. ~~;~~ ~~]~~

(a-1) Under an automobile insurance policy that is delivered, issued for delivery, or renewed in this state, an insurer, an

employee or agent of an insurer, an insurance adjuster, or an entity that employs an insurance adjuster may not directly or indirectly limit the insurer's coverage under a policy covering damage to a motor vehicle by:

(1) ~~[(2)]~~ limiting the beneficiary of the policy from selecting a repair person or facility to repair damage to the vehicle;

(2) intimidating, coercing, or threatening the beneficiary to induce the beneficiary to use a particular repair person or facility; or

(3) offering an incentive or inducement, other than the list described by Section 1952.309 or a warranty issued by a repair person or facility, for the beneficiary to use a particular repair person or facility.

(b) In settling a liability claim by a third party against an insured for property damage claimed by the third party, an insurer, an employee or agent of an insurer, an insurance adjuster, or an entity that employs an insurance adjuster may not:

(1) require the third-party claimant to have repairs made by a particular repair person or facility; ~~[ø]~~

(2) require the third-party claimant to use a particular brand, type, kind, age, vendor, supplier, or condition of parts or products;

(3) intimidate, coerce, or threaten the third-party claimant to induce the claimant to use a particular repair person or facility; or

(4) offer an incentive or inducement, other than the list described by Section 1952.309 or a warranty issued by a repair person or facility, for the third-party claimant to use a particular repair person or facility.

SECTION 3. Section 1952.302, Insurance Code, is amended to read as follows:

Sec. 1952.302. PROHIBITED ACTS IN CONNECTION WITH REPAIR OF MOTOR VEHICLE. (a) In connection with the repair of damage to a motor vehicle covered under an automobile insurance policy, an insurer, an employee or agent of an insurer, an insurance adjuster, or an entity that employs an insurance adjuster may not:

employee or agent of an insurer, an insurance adjuster, or an entity that employs an insurance adjuster may not directly or indirectly limit the insurer's coverage under a policy covering damage to a motor vehicle by:

(1) ~~[(2)]~~ limiting the beneficiary of the policy from selecting a repair person or facility to repair damage to the vehicle to the vehicle's condition before the damage occurred in order for the beneficiary to obtain the repair without owing any out-of-pocket cost other than the deductible;

(2) intimidating, coercing, or threatening the beneficiary to induce the beneficiary to use a particular repair person or facility; or

(3) offering an incentive or inducement, other than a warranty issued by the insurer or a repair person or facility, for the beneficiary to use a particular repair person or facility.

(b) In settling a liability claim by a third party against an insured for property damage claimed by the third party, an insurer, an employee or agent of an insurer, an insurance adjuster, or an entity that employs an insurance adjuster may not:

(1) require the third-party claimant to have repairs made by a particular repair person or facility; ~~[ø]~~

(2) require the third-party claimant to use a particular brand, type, kind, age, vendor, supplier, or condition of parts or products to repair damage to the vehicle to the vehicle's condition before the damage occurred;

(3) intimidate, coerce, or threaten the third-party claimant to induce the claimant to use a particular repair person or facility; or

(4) offer an incentive or inducement, other than a warranty issued by the insurer or a repair person or facility, for the third-party claimant to use a particular repair person or facility.

SECTION 3. Section 1952.302, Insurance Code, is amended to read as follows:

Sec. 1952.302. PROHIBITED ACTS IN CONNECTION WITH REPAIR OF MOTOR VEHICLE. In connection with the repair of damage to a motor vehicle covered under an automobile insurance policy, an insurer, an employee or agent of an insurer, an insurance adjuster, or an entity that employs an insurance adjuster may not:

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

(2) state or suggest, either orally or in writing, to a beneficiary that the beneficiary must use a specific repair person or facility or a repair person or facility identified on a preferred list compiled by an insurer for the damage repair or parts replacement to be covered by the policy; [Ø]

(3) restrict the right of a beneficiary or third-party claimant to choose a repair person or facility by requiring the beneficiary or third-party claimant to travel an unreasonable distance to repair the damage;

(4) disregard a repair operation or cost identified by an estimating system that was previously agreed on by the insurer and the repair person or facility to determine the cost of repair; or

(5) refuse to pay the reasonable and necessary cost of a repair operation for covered damages less any portion of the cost that is the insured's responsibility under the policy.

(b) For purposes of Subsection (a)(5), the cost of a repair operation is reasonable and necessary if the repair operation and its cost are in accordance with an estimating system that is recognized by the commissioner.

SECTION 4. Subchapter G, Chapter 1952, Insurance Code, is amended by adding Sections 1952.308, 1952.309, and 1952.310 to read as follows:

Sec. 1952.308. INSURER ACCESS TO MOTOR VEHICLE. If a beneficiary or third-party claimant makes a claim seeking repair of an automobile, the insurer, including the insurer's agent or broker, may have access to the automobile to prepare a competitive estimate.

Sec. 1952.309. LIST OF REPAIR PERSONS AND FACILITIES. (a) Upon request, an insurer shall provide, without prejudice or bias, to a beneficiary or third-party claimant a list of all repair persons and facilities that:

(1) are reasonably close or convenient to the beneficiary or third-party claimant;

(2) agree to perform quality repairs that

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

(2) state or suggest, either orally or in writing, to a beneficiary that the beneficiary must use a specific repair person or facility or a repair person or facility identified on a preferred list compiled by an insurer for the damage repair or parts replacement to be covered by the policy; [Ø]

(3) restrict the right of a beneficiary or third-party claimant to choose a repair person or facility by requiring the beneficiary or third-party claimant to travel a [an unreasonable] distance considered inconvenient by a beneficiary or third-party claimant to repair the damage; or

(4) disregard a repair operation or cost identified by an estimating system, including the system's procedural pages, selected by the insurer for use in writing the automobile repair estimate for the motor vehicle.

No equivalent provision.

meet reasonable industry repair standards;
and

(3) agree to provide a warranty for the
quality of work, including refinishing, in
writing to the beneficiary or third-party
claimant, for a period of not less than one
year from the date of repair.

(b) If a beneficiary or third-party claimant
requests a list under Subsection (a), the
insurer shall notify the beneficiary or
claimant that the beneficiary or claimant
may select a repair person or facility at the
sole discretion of the beneficiary or
claimant.

Sec. 1952.310. IMMUNITY FROM
LIABILITY. An insurer is not liable for
damages arising from the work performed
by a repair person or facility selected by the
beneficiary or third-party claimant.

SECTION 5. The change in law made by
this Act applies only to an insurance policy
that is delivered, issued for delivery, or
renewed on or after January 1, 2018. A
policy delivered, issued for delivery, or
renewed before that date is governed by the
law as it existed immediately before the
effective date of this Act, and that law is
continued in effect for that purpose.

SECTION 6. This Act takes effect
September 1, 2017.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.