

House Bill 1117

By: Representatives Franklin of the 160th, Smith of the 18th, Stephens of the 164th, Cheokas of the 151st, Gambill of the 15th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapters 6 and 34 of Title 33 of the Official Code of Georgia Annotated, relating
2 to unfair trade practices and motor vehicle accident reparations, respectively, so as to provide
3 for claims processing for repairs under motor vehicle liability insurance policies; to provide
4 for unfair claims settlement practices; to provide for the selection of a repair facility; to
5 provide for payment for repairs; to provide for certain disclosures and notifications; to
6 provide for original equipment manufacturer repair procedures; to provide for supplemental
7 estimates; to provide for timely claims processing; to provide for written explanations; to
8 provide for definitions; to provide for private causes of action; to provide for rules and
9 regulations; to provide for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 6 of Title 33 of the Official Code of Georgia Annotated, relating to unfair trade
13 practices, is amended by revising paragraphs (15) and (16) in Code Section 33-6-34, relating
14 to unfair claims settlement practices, as follows:

15 "(15) Failure to comply with any insurer requirement in Chapter 20E of this title, the
16 'Surprise Billing Consumer Protection Act,' including:

- 17 (A) The failure to designate whether the healthcare plan is subject to the exclusive
 18 jurisdiction of the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec.
 19 1001, et seq.;
- 20 (B) The failure to directly pay the provider or facility within 15 working days for
 21 electronic claims or 30 calendar days for paper claims any moneys due under Code
 22 Section 33-20E-4 or 33-20E-5; or
- 23 (C) The failure to pay a resolution organization as required under Code Section
 24 33-20E-16; **and**
- 25 (16) Failure to comply with any insurer requirement relating to emergency services or
 26 care in Article 4 of Chapter 11 of Title 31, Article 1 of Chapter 20A of this title, Chapter
 27 20E of this title, Chapter 21A of this title, Code Section 33-24-59.27, and Chapter 30 of
 28 this title; and
- 29 (17) Failure to comply with any insurer requirement relating to claims processing as
 30 provided under Code Sections 33-34-6, 33-34-10, and 33-34-11."

31 **SECTION 2.**

32 Chapter 34 of said title, relating to motor vehicle accident reparations, is amended by
 33 revising Code Section 33-34-6, relating to selection of motor vehicle repair facility, as
 34 follows:

35 "33-34-6.

36 ~~(a) Subject to the provisions of subsection (b) of this Code section, no insurer shall~~
 37 ~~represent to a person making a claim under a motor vehicle insurance policy that the use~~
 38 ~~of or the failure to use a particular repair facility or particular repair facilities may result~~
 39 ~~in the nonpayment of a claim.~~

40 ~~(b) No insurer shall require a person making a claim under a motor vehicle insurance~~
 41 ~~policy to use a particular repair facility or particular repair facilities in order to settle a~~

42 ~~claim if the person making the claim can obtain the repair work on the motor vehicle at the~~
43 ~~same cost from another source.~~

44 (a) As used in this Code section, the term:

45 (1) 'Claimant' means either a first-party claimant or insured or a third-party claimant who
46 asserts a claim for payment, benefits, reimbursement, or damages under a motor vehicle
47 liability insurance policy arising out of, based on, or in any way related to a motor vehicle
48 collision, loss, ownership, maintenance, or use. Such term includes any assignee,
49 subrogee, or legal representative of a first-party claimant or third-party claimant to the
50 extent such assignee, subrogee, or legal representative asserts the claim.

51 (2) 'Financial interest' means any stake of monetary value, direct or indirect, in an entity.
52 Such term includes any ownership interest, direct repair program, affiliation agreement,
53 avored facility agreement, labor rate agreement, parts agreement, or service level
54 agreement.

55 (3) 'Motor vehicle liability insurance' means motor vehicle insurance that covers the use
56 of a motor vehicle and its operating equipment; covers liability, collision, comprehensive,
57 personal injury protection or medical payments, or uninsured or underinsured motorist
58 protection; or provides the mandatory minimum limits required under this chapter for the
59 personal use of a private passenger automobile. Such term includes coverage provided
60 through an approved plan or certificate of self-insurance to the extent recognized under
61 state law as satisfying such minimum limits.

62 (b) All policies of motor vehicle liability insurance shall allow a claimant under such
63 policy to select the repair facility to provide repairs covered under such policy. No insurer
64 shall require a claimant under such policy to use a repair facility in which such insurer has
65 a financial interest. No insurer shall represent to a claimant under such policy that the use
66 of or the failure to use a particular repair facility or particular repair facilities may result
67 in nonpayment or delayed or reduced payment of a claim or less quality or timeliness of

68 repair under a claim. The amount determined to be payable under a motor vehicle liability
 69 insurance policy shall be paid regardless of the repair facility selected by a claimant.

70 (c) No insurer shall recommend the use of a particular repair facility without clearly
 71 informing a claimant under a motor vehicle liability insurance policy that:

72 (1) The claimant is under no obligation to use the recommended repair facility;

73 (2) The claimant may use a repair facility of the claimant's choice;

74 (3) The amount determined by the insurer to be payable under such policy will be paid
 75 regardless of whether or not the claimant uses the recommended repair facility; and

76 (4) Whether or not the insurer has a financial interest in the recommended repair facility.

77 (d)(1) A violation of this Code section that occurs with such frequency as to constitute
 78 a general business practice shall be a violation of Article 2 of Chapter 6 of this title, the
 79 'Unfair Claims Settlement Practices Act.'

80 (2) Any claimant aggrieved by a violation of the provisions of this Code section shall
 81 have a private cause of action for injunctive relief, treble damages, and any other relief
 82 available under law.

83 (e) The Commissioner shall promulgate rules and regulations necessary to implement this
 84 Code section."

85 **SECTION 3.**

86 Said chapter is further amended by adding new Code sections to read as follows:

87 "33-34-10.

88 (a) As used in this Code section, the term:

89 (1) 'Claimant' shall have the same meaning as set forth in Code Section 34-34-6.

90 (2) 'Motor vehicle liability insurance' shall have the same meaning as set forth in Code
 91 Section 34-34-6.

92 (3) 'Original equipment manufacturer repair procedure' means any written, electronic,
 93 or published repair standard, procedure, specification, or directive issued by a motor

94 vehicle's original equipment manufacturer, including, but not limited to, body, frame,
95 structural, mechanical, electronic, scanning, calibration, and refinishing operations.
96 (4) 'Repair facility' means a motor vehicle dealer, garage, body shop, or other
97 commercial entity which undertakes the repair or replacement of parts of a motor vehicle.
98 (b) All policies of motor vehicle liability insurance shall provide for all repairs to be made
99 in accordance with the applicable original equipment manufacturer repair procedures.
100 (c) No insurer that issues, delivers, issues for delivery, or renews a motor vehicle liability
101 insurance policy shall require a claimant to deviate from or deny, omit, or disregard
102 original equipment manufacturer repair procedures or to use nonoriginal equipment
103 manufacturer parts, procedures, or specifications.
104 (d) An insurer that issues, delivers, issues for delivery, or renews a motor vehicle liability
105 insurance policy shall:
106 (1) Approve any original equipment manufacturer repair procedure, including, but not
107 limited to, any labor, materials, parts, calibrations, scanning, or sublet operations
108 necessary to perform such procedure, that is documented in a written estimate or
109 supplemental estimate from a repair facility or in a written request from a repair facility
110 or claimant when the applicable original equipment manufacturer service publication,
111 position statement, or procedure is identified; and
112 (2) Only deny reimbursement for a documented original equipment manufacturer repair
113 procedure if, within three business days of receipt of the written estimate, supplemental
114 estimate, or written request provided for in paragraph (1) of this subsection, such insurer
115 provides to the claimant:
116 (A) A written itemized explanation for such denial, including, but not limited to, policy
117 coverage limitations, prior payment, duplication, or unrelated to loss, specific to the
118 original equipment manufacturer repair procedure; and
119 (B) Notice that such denial might constitute an unfair claims settlement practice under
120 state law.

121 (e)(1) A violation of this Code section that occurs with such frequency as to constitute
122 a general business practice shall be a violation of Article 2 of Chapter 6 of this title, the
123 'Unfair Claims Settlement Practices Act.'

124 (2) Any claimant aggrieved by a violation of the provisions of this Code section shall
125 have a private cause of action for injunctive relief, treble damages, and any other relief
126 available under law.

127 (f) The Commissioner shall promulgate rules and regulations necessary to implement this
128 Code section.

129 33-34-11.

130 (a) As used in this Code section, the term:

131 (1) 'Appraiser' means any person evaluating motor vehicle damage and determining the
132 cost of parts and labor required to repair such damage.

133 (2) 'Claimant' shall have the same meaning as set forth in Code Section 34-34-6.

134 (3) 'Motor vehicle liability insurance' shall have the same meaning as set forth in Code
135 Section 34-34-6.

136 (4) 'Repair facility' means a motor vehicle dealer, garage, body shop, or other
137 commercial entity which undertakes the repair or replacement of parts of a motor vehicle,
138 including, but not limited to, frames, doors, bumpers, and paint.

139 (5) 'Supplemental damage' means additional physical damage to a motor vehicle that was
140 not visible or reasonably ascertainable at the time of the original inspection or appraisal
141 and is discovered after the initial insurance claim or estimated repair cost is filed.

142 (6) 'Supplemental estimate' means a written estimate for supplemental damage prepared
143 by an appraiser.

144 (b) An insurer providing coverage under a motor vehicle insurance liability policy shall
145 promptly acknowledge and investigate claims of supplemental damage submitted by a
146 repair facility or claimant by meeting at least the following requirements:

147 (1) Within one business day of a notification of supplemental damage and supplemental
148 estimate, the insurer shall assign an appraiser to inspect the damaged motor vehicle in
149 person or review the supplemental estimate; and

150 (2) Within three business days of a notification of supplemental damage and
151 supplemental estimate, the insurer shall complete an inspection of the damaged motor
152 vehicle in person or review the supplemental estimate and provide a written response;
153 provided, however, that the time for inspection or review may be extended for an
154 additional three business days if unforeseen circumstances make inspection or review
155 within three business days impracticable, provided that the insurer notifies the repair
156 facility and claimant of the specific unforeseen circumstance that necessitates such
157 extension.

158 (c) Within ten business days of receipt of a notification of supplemental damage and
159 supplemental estimate, an insurer shall provide a repair facility and claimant with a written
160 decision indicating the line items, parts, or operations that are approved and authorized for
161 payment; those that are denied, reduced, or altered from the supplemental estimate; and a
162 written explanation for such denial, reduction, or alteration, including, but not limited to,
163 policy coverage limitations, prior payment, duplication, or unrelated to loss. No insurer
164 shall issue payment or settlement for a supplemental estimate without such written decision
165 and explanation.

166 (d)(1) A violation of this Code section that occurs with such frequency as to constitute
167 a general business practice shall be a violation of Article 2 of Chapter 6 of this title, the
168 'Unfair Claims Settlement Practices Act.'

169 (2) Any claimant aggrieved by a violation of the provisions of this Code section shall
170 have a private cause of action for injunctive relief, treble damages, and any other relief
171 available under law.

172 (e) The Commissioner shall promulgate rules and regulations necessary to implement this
173 Code section, which may include, but shall not be limited to, prescribing uniform
174 supplemental estimate and written explanation forms."

175 **SECTION 4.**

176 All laws and parts of laws in conflict with this Act are repealed.