

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1540

H.P. 1061

House of Representatives, April 27, 2017

An Act To Protect Consumers' Freedom of Choice in Auto Collision Repairs

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HAMANN of South Portland.
Cosponsored by Representatives: COLLINGS of Portland, LAWRENCE of South Berwick.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24-A MRSA §2164-C, sub-§2**, as enacted by PL 2005, c. 101, §1, is
3 amended to read:

4 **2. Appraisals or repairs to motor vehicles for collision damage.** A domestic or
5 foreign insurer or its agent or employee may not require, directly or indirectly, that
6 appraisals or repairs to motor vehicles with collision damage be made or not be made in a
7 specified place of business.

8 A domestic or foreign insurer or its agent or employee may not contract with any person
9 to act as its agent for purposes of managing, handling or arranging repair or replacement
10 of motor vehicles for collision damage when that person is compensated by payment of a
11 portion of the difference between the list price of the product or services provided and the
12 amount paid to the person providing repair and replacement service.

13 A domestic or foreign insurer or its agent or employee may not recommend the use of a
14 particular motor vehicle repair service or network of repair services without informing the
15 claimant that the claimant is under no obligation to use the recommended repair service
16 or network of repair services.

17 A domestic or foreign insurer or its agent or employee may not engage in any act or
18 practice of intimidation, coercion, threat, incentive or inducement for or against an
19 insured or claimant to use a specified place of business for repair and replacement
20 services. A consumer benefit included within a preferred vendor program is not an
21 incentive or inducement under this subsection but may not be presented as an incentive or
22 inducement to use a specified place of business for repair and replacement services.

23 **Sec. 2. 24-A MRSA §2164-C, sub-§§3 to 5** are enacted to read:

24 **3. Claim report scripts; required advisory.** Upon application for a certificate of
25 authority under chapter 5, subchapter 1, changing an approved script under this
26 subsection or within 60 days after the effective date of this subsection for a domestic or
27 foreign insurer that possesses a certificate of authority on the effective date of this
28 subsection, the domestic or foreign insurer shall file with the superintendent and receive
29 the superintendent's approval for any prearranged script or talking points the domestic or
30 foreign insurer requires to be told or read to an insured or claimant at the time a claim for
31 motor vehicle collision damage is reported. Any prearranged script or talking points
32 under this subsection must include the following advisory to the insured or claimant:

33 "You have the legal right to choose a motor vehicle collision repair shop to fix your
34 vehicle. Your policy will cover the reasonable costs of repairing your vehicle to its pre-
35 accident condition no matter where you have repairs made. Have you selected a motor
36 vehicle collision repair shop, or would you like a referral?"

37 The prearranged script or talking points must also include for an insured or claimant who
38 requests a referral to a motor vehicle repair service:

39 "Would you like the list of motor vehicle repair services within 20 miles of your
40 residence?"

1 If an insured or claimant has indicated that the insured or claimant has selected a motor
2 vehicle repair service, the insurer must cease all efforts to influence the insured's or
3 claimant's choice of repair service. If the insured or claimant requests a referral to a motor
4 vehicle repair service, the insurer may only provide a list of all appropriate motor vehicle
5 repair services within 20 miles of the residence of the insured or claimant.

6 **4. Superintendent review; powers.** The superintendent shall review any
7 prearranged script or talking points of a domestic or foreign insurer filed with the
8 superintendent under subsection 3 and reject or modify any item in the script or talking
9 points that violates a provision of this Title. A domestic or foreign insurer may not use or
10 require to be used any script or talking points rejected by the superintendent under this
11 subsection. Upon a complaint or the superintendent's own initiative, the superintendent
12 may request and a domestic or foreign insurer shall provide for review by the
13 superintendent any audio, video or written recording of the domestic or foreign insurer
14 receiving a claim from an insured or claimant. If the review was conducted pursuant to a
15 complaint, the superintendent shall provide the complainant with the decision by the
16 superintendent and a copy of the audio, video or written recording that was provided to
17 the superintendent by the domestic or foreign insurer.

18 **5. Unfair trade practice; civil violation.** A domestic or foreign insurer who
19 violates this section commits a violation of the Maine Unfair Trade Practices Act and a
20 civil violation for which, along with any other remedy allowed by law, the following
21 finest must be adjudged:

22 A. For a first offense, \$1,000;

23 B. For a 2nd offense within a 12-month period, \$2,500;

24 C. For a 3rd offense within a 12-month period, \$5,000; and

25 D. For a 4th or subsequent offense within a 12-month period, \$5,000 and the
26 superintendent may suspend or revoke the insurer's certificate of authority.

27 In addition to the fines specified in paragraphs B to D, for a 2nd and subsequent violation
28 of this section, the insurer shall provide to the superintendent proof that the insurer has
29 taken action to prevent further violations of this section, including training of employees
30 and other corrective measures.

31 Upon complaint or the Attorney General's own initiative, the Attorney General may
32 enforce this section including seeking any administrative or civil remedy allowed by law.
33 The Attorney General to enforce this section is not required to show that a violation of
34 this section occurs with such frequency as to indicate a general business practice.

35 **SUMMARY**

36 This bill amends the provisions of law regarding insurers' initial communications
37 with an insured or claimant filing a claim for collision damage to an automobile in the
38 following ways.

1 1. It clarifies that an insurer may not intimidate, coerce, threaten or provide incentive
2 or inducement to the insured or claimant to use any particular specified place of business
3 to repair the automobile.

4 2. It requires an insurer to submit to and have approved by the Superintendent of
5 Insurance the script or talking points the insurer requires to be read or told to an insured
6 or claimant upon receiving the claim and to include in the script or talking points an
7 advisory that the insured or claimant has the legal right to choose the motor vehicle repair
8 service to fix the vehicle.

9 3. It makes a violation of the provisions of this bill and the other provisions
10 regarding free competition in insurance for motor vehicle repairs an unfair trade practice
11 and a civil violation with graduated fines from \$1,000 for a first offense to \$5,000, a
12 requirement for the 2nd and subsequent offense that the insurer provide proof of
13 corrective measures and, for a 4th or subsequent offense within a 12-month period,
14 possible suspension or revocation of the insurer's certificate of authority.

15 4. It allows the Attorney General to enforce the provisions of this bill and the other
16 provisions regarding free competition in insurance for motor vehicle repairs.