

HOUSE BILL NO. 273

INTRODUCED BY DOLEZAL, GAGE, CHRISTIAENS, RYAN, T. NELSON,
WYATT, SCHYE, FRANKLIN, WILSON, PAVLOVICH, TUSS, R. JOHNSON,
DRISCOLL, WALLIN, TVEIT, S. RICE, DOWELL, BARNHART, MCCULLOCH,
GALVIN, WANZENRIED, MCCAFFREE, STRIZICH, DOHERTY

IN THE HOUSE

| | |
|-------------------|---|
| JANUARY 20, 1993 | INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT. |
| | FIRST READING. |
| FEBRUARY 17, 1993 | COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. |
| FEBRUARY 18, 1993 | PRINTING REPORT. |
| | SECOND READING, DO PASS AS AMENDED. |
| FEBRUARY 19, 1993 | ENGROSSING REPORT. |
| FEBRUARY 23, 1993 | THIRD READING, PASSED. AYES, 100; NOES, 0. |
| FEBRUARY 24, 1993 | TRANSMITTED TO SENATE. |

IN THE SENATE

| | |
|----------------|--|
| MARCH 1, 1993 | INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY. |
| | FIRST READING. |
| MARCH 17, 1993 | COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED. |
| MARCH 18, 1993 | SECOND READING, CONCURRED IN. |
| MARCH 19, 1993 | THIRD READING, CONCURRED IN. AYES, 46; NOES, 1. |
| | RETURNED TO HOUSE WITH AMENDMENTS. |

IN THE HOUSE

| | |
|---------------|---|
| APRIL 1, 1993 | SECOND READING, AMENDMENTS NOT CONCURRED IN. |
|---------------|---|

APRIL 2, 1993

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 5, 1993

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 7, 1993

FREE CONFERENCE COMMITTEE REPORTED.

IN THE SENATE

APRIL 12, 1993

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

APRIL 13, 1993

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 15, 1993

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

APRIL 16, 1993

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *273*
 2 INTRODUCED BY *W. Ryan*
 3 *W. Ryan*
 4 A BILL FOR AN ACT ENTITLED, "AN ACT PROHIBITING MOTOR
 5 VEHICLE INSURANCE COMPANIES FROM DIRECTING INSURED TO
 6 SPECIFIC COMPANIES OR LOCATIONS FOR AUTOMOBILE GLASS
 7 REPLACEMENT, REPAIR SERVICE, OR PRODUCTS; PROHIBITING THE
 8 ESTABLISHMENT OF AN AGREEMENT WITH A COMPANY TO ARRANGE
 9 PAYMENT THROUGH A THIRD PARTY FOR AUTOMOBILE GLASS
 10 REPLACEMENT OR REPAIR SERVICE; PROHIBITING A COMPANY FROM
 11 ACTING AS AGENT FOR AN INSURANCE COMPANY WHEN EITHER THE
 12 AGENT OR INSURANCE COMPANY SETS A PRICE THAT MUST BE MET BY
 13 A REPAIR SHOP AS A CONDITION TO DOING REPAIR WORK;
 14 PROHIBITING THE ESTABLISHMENT OF A PRICE TO BE MET BY A
 15 REPAIR SHOP THAT IS BELOW THE LOWEST PREVAILING MARKET
 16 PRICE; PROHIBITING PERSONS WHO SELL, REPLACE, OR REPAIR
 17 AUTOMOBILE GLASS FROM OFFERING CREDITS AGAINST INSURANCE
 18 DEDUCTIBLES; PROVIDING PENALTIES FOR VIOLATIONS; AND
 19 AMENDING SECTIONS 30-14-222, 30-14-223, AND 30-14-224, MCA."

20
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. Section 1. Designation of specific repair
 23 shops prohibited -- lists allowed. (1) (a) An insurance
 24 company, including its agents and adjusters, that issues or
 25 renews a policy of insurance in this state covering, in

1 whole or part, a motor vehicle may not require or recommend
 2 that a person insured under the policy use a particular
 3 company or location for providing automobile glass
 4 replacement, repair services, or products insured in whole
 5 or part by the policy.

6 (b) An insurance company, including its agents and
 7 adjusters, may not engage in any act or practice of
 8 intimidation, coercion, threat, incentive, or inducement for
 9 or against an insured person to use a particular company or
 10 location to provide automobile glass replacement, repair
 11 services, or products.

12 (2) (a) An insurance company may provide an insured
 13 with a list that includes the names of particular companies
 14 or locations providing automobile glass replacement, repair
 15 services, or products if the listed companies or locations
 16 are reasonably close and convenient to the insured and if
 17 none of the companies or locations on the list have entered
 18 into an arrangement with any other company or location on
 19 the list with respect to prices or other aspects of
 20 furnishing services or products. The insurance company may
 21 restrict the list to those companies or locations that meet
 22 reasonable standards of quality, service, and safety.

23 (b) If a list is provided, the insurance company or its
 24 agents or adjusters shall, when a claim wholly or partially
 25 reimbursable under the insurance policy is made by the

1 insured, provide oral and written disclosure that a
 2 nonlisted company or location may be used at the insured's
 3 sole discretion and that the insurance company will fully
 4 and promptly pay, at no less than the lowest prevailing
 5 market price as defined in [section 2], for the cost of
 6 automobile glass replacement, repair services, or products
 7 provided, less any deductible under the terms of the policy.
 8 If the insured elects to use a nonlisted company or
 9 location, the insurance company may not impose upon the
 10 insured any requirements, including obtaining written
 11 estimates, not required if the insured elects to use a
 12 listed company or location.

13 (3) Notwithstanding the provisions of subsections (1)
 14 and (2), an insurance company may agree to pay the full cost
 15 of glass replacement or repair.

16 **NEW SECTION. Section 2. Lowest prevailing market**
 17 **price.** For purposes of [sections 1 and 3], "lowest
 18 prevailing market price" means the lowest market price in a
 19 local area for similarly situated companies or locations
 20 providing comparable automobile glass replacement, repair
 21 services, or products without taking into consideration
 22 companies or locations that have arrangements with one
 23 another with respect to prices or other aspects of
 24 furnishing glass replacement, repair services, or products.
 25 The lowest prevailing market price may not be less than cost

1 as provided in 30-14-209.

2 **NEW SECTION. Section 3. Prohibited activities.** (1) It
 3 is unlawful for an insurance company, individually or with
 4 others, to directly or indirectly:

5 (a) establish an agreement with a company to manage,
 6 handle, or arrange automobile glass replacement or repair
 7 work;

8 (b) establish an agreement with a company to act as an
 9 agent for the insurance company under which the insurance
 10 company or the agent sets a price that must be met by a
 11 repair shop as a condition for doing glass replacement or
 12 repair work for the insurance company;

13 (c) establish an agreement with any company that
 14 requires a repair shop to bill through the company as a
 15 condition of doing glass replacement or repair work; or

16 (d) establish a price that must be met by a repair shop
 17 as a condition for doing glass replacement or repair work
 18 that is below the lowest prevailing market price as provided
 19 in [section 2].

20 (2) A company may not manage, handle, or arrange
 21 automobile glass replacement or repair work for which the
 22 company retains a percentage of the claim paid by the
 23 insurance company to the repair shop or bills the insurance
 24 company for an amount in excess of the amount paid to the
 25 repair shop.

1 **NEW SECTION. Section 4. Rebates prohibited** --
 2 **advertising allowed.** (1) A person engaged in the sale,
 3 repair, or replacement of automobile glass may not
 4 advertise, promise to provide, or offer any coupon, credit,
 5 or rebate to pay all or part of an insurance deductible
 6 under a casualty or property insurance policy.

7 (2) A person or association of persons engaged in the
 8 sale, repair, or replacement of automobile glass may
 9 advertise services as to quality, service, and safety.

10 **Section 5.** Section 30-14-222, MCA, is amended to read:

11 "30-14-222. Injunctions -- damages -- production of
 12 evidence. (1) Any A person, if injured thereby by an act, or
 13 the attorney general may maintain an action to enjoin a
 14 continuance of an act in violation of 30-14-205 through
 15 30-14-218 or [sections 1 through 4] and for the recovery of
 16 damages. If in such the action the court finds that the
 17 defendant is violating or has violated any of the provisions
 18 of 30-14-205 through 30-14-218 or [sections 1 through 4], it
 19 shall enjoin the defendant from a continuance thereof of the
 20 violation. It is not necessary to allege or prove actual
 21 damages to the plaintiff.

22 (2) In addition to such injunctive relief, the
 23 plaintiff is entitled to recover from the defendant three
 24 times the amount of actual damages sustained.

25 (3) A defendant in an action brought under this section

1 may be required to testify under the Montana Rules of Civil
 2 Procedure. In addition, the books and records of any--such
 3 the defendant may be brought into court and introduced into
 4 evidence by reference. No--information Information so
 5 obtained may not be used against the defendant as a basis
 6 for a misdemeanor prosecution under 30-14-205 through
 7 30-14-218, [sections 1 through 4], or and 30-14-224."

8 **Section 6.** Section 30-14-223, MCA, is amended to read:

9 "30-14-223. Department to institute suit. Upon the
 10 third violation of any of the provisions of 30-14-205
 11 through 30-14-218 or [sections 1 through 4] by any a
 12 business, the department shall institute proper suits or quo
 13 warranto proceedings in a court of competent jurisdiction
 14 for the forfeiture of its charter, rights, franchises or
 15 privileges, and powers exercised by such the business and to
 16 permanently enjoin it from transacting business in this
 17 state. If in such the action the court finds that the
 18 business is violating or has violated any of the provisions
 19 of 30-14-205 through 30-14-218 or [sections 1 through 4], it
 20 shall enjoin the business from doing business in this state
 21 permanently or for such a time as the court orders or shall
 22 annul the charter or revoke the franchise of such the
 23 business."

24 **Section 7.** Section 30-14-224, MCA, is amended to read:

25 "30-14-224. Penalties. (1) Except as otherwise provided

1 in this section, a person, whether as principal, agent,
2 officer, or director, who violates any of the provisions of
3 30-14-206 through 30-14-218 or [sections 1 through 4] is
4 guilty of a misdemeanor for each single violation and upon
5 conviction thereof shall be fined not less than \$100 or more
6 than \$1,000 or imprisoned for a term not to exceed 6 months,
7 or both.

8 (2) A violation of 30-14-205 is punishable by
9 imprisonment in the county jail for a period not less than
10 24 hours or more than 1 year or by fine not exceeding
11 \$25,000, or both.

12 (3) When there is a violation of 30-14-216, in addition
13 to the penalty specified in subsection (1), the court before
14 which a conviction is had shall, within 10 days after
15 judgment of conviction is given, forward a certified copy of
16 the judgment to the department of agriculture and that
17 department shall revoke any license issued to the person so
18 convicted--~~in such case no.~~ A new license may not be granted
19 to the person whose license is revoked or to anyone either
20 directly or indirectly engaged with him that person in such
21 that business for a period of 1 year."

22 NEW SECTION. Section 8. Codification instruction.
23 [Sections 1 through 4] are intended to be codified as an
24 integral part of Title 30, chapter 14, part 2, and the
25 provisions of Title 30, chapter 14, part 2, apply to

1 [sections 1 through 4].

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0273, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill prohibits Montana motor vehicle insurance companies from directing insureds to specific companies or locations for automobile glass replacement repair service. It also prohibits the establishment of a price to be met by a repair shop that is below the lowest prevailing market price.

ASSUMPTIONS:

Department of Commerce

1. Assume that the Department will be required to investigate two cases alleging sales below cost established by section 30-14-209, MCA.
2. Assume that the Department will be requested to conduct two sales below cost hearings and surveys to establish the market price in the locality as set forth by section 30-14-209 through section 30-14-212, MCA.
3. Assume that the Department's final administrative order will be appealed to District Court in both cases; as provided in section 30-14-220, MCA.

FISCAL IMPACT:

| | FY '94 | | | FY '95 | | |
|----------------------|-------------|--------------|------------|-------------|--------------|------------|
| | Current Law | Proposed Law | Difference | Current Law | Proposed Law | Difference |
| <u>Expenditures:</u> | | | | | | |
| Personal Services | 0 | 20,052 | 20,052 | 0 | 20,052 | 20,052 |
| Operating Costs | 0 | 3,393 | 3,393 | 0 | 3,393 | 3,393 |
| Total | 0 | 23,445 | 23,445 | 0 | 23,445 | 23,445 |
| <u>Funding:</u> | | | | | | |
| General Fund | 0 | 23,445 | 23,445 | 0 | 23,445 | 23,445 |

David Lewis 2-10-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2-11-93
EDWARD DOLEZAL, PRIMARY SPONSOR DATE
Fiscal Note for HB0273, as introduced
HB 273

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0273, second reading

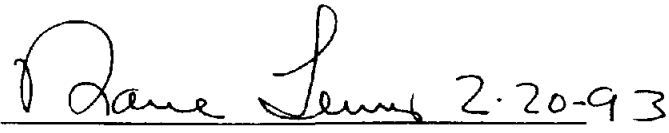
DESCRIPTION OF PROPOSED LEGISLATION: An act prohibiting motor vehicle insurance companies from directing insureds to specific companies or locations for automobile glass replacement, repair service, or products; prohibiting the establishment of an agreement with a company to arrange payment through a third party for automobile glass replacement or repair service; prohibiting a company from acting as glass broker for an insurance company when the glass broker sets a price that must be met by a repair shop as a condition to doing repair work; defining glass broker; prohibiting the establishment of a price to be met by a glass repair shop as a condition to doing glass replacement or glass repair work when the price is below the lowest prevailing market price; prohibiting persons who sell, replace, or repair automobile glass from offering incentives; providing penalties for violation; granting enforcement authority to the insurance commissioner.

ASSUMPTIONS:**State Auditor's Office:**

1. The commissioner of insurance will conduct two violation investigations per year. Both will result in cease and desist orders and the associated hearings.
2. Existing staff will conduct the compliance investigations.
3. Agency legal services will be used for legal assistance during the hearing process.
4. Hearing costs will be paid for by the commissioner of insurance.

FISCAL IMPACT:

| | FY '94 | | | FY '95 | | |
|----------------------|-------------|--------------|------------|-------------|--------------|------------|
| | Current Law | Proposed Law | Difference | Current Law | Proposed Law | Difference |
| Expenditures: | | | | | | |
| Operating Costs | 0 | 10,000 | 10,000 | 0 | 10,000 | 10,000 |
| Funding: | | | | | | |
| General Fund | 0 | 10,000 | 10,000 | 0 | 10,000 | 10,000 |


 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning


 EDWARD DOLEZAL, PRIMARY SPONSOR DATE

Fiscal Note for HB0273, second reading

HB 273, #2

HOUSE BILL NO. 273

INTRODUCED BY DOLEZAL, GAGE, CHRISTIAENS, RYAN, T. NELSON,
 WYATT, SCHYE, FRANKLIN, WILSON, PAVLOVICH, TUSS, R. JOHNSON,
 DRISCOLL, WALLIN, TVEIT, S. RICE, DOWELL, BARNHART, MCCULLOCH,
 GALVIN, WANZENRIED, MCCAPFREE, STRIZICH, DOHERTY

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING MOTOR
 VEHICLE INSURANCE COMPANIES FROM DIRECTING INSURED TO
 SPECIFIC COMPANIES OR LOCATIONS FOR AUTOMOBILE GLASS
 REPLACEMENT, REPAIR SERVICE, OR PRODUCTS; PROHIBITING THE
 ESTABLISHMENT OF AN AGREEMENT WITH A COMPANY TO ARRANGE
 PAYMENT THROUGH A THIRD PARTY FOR AUTOMOBILE GLASS
 REPLACEMENT OR REPAIR SERVICE; PROHIBITING A COMPANY FROM
 ACTING AS AGENT GLASS BROKER FOR AN INSURANCE COMPANY WHEN
 EITHER THE AGENT--OR-INSURANCE-COMPANY GLASS BROKER SETS A
 PRICE THAT MUST BE MET BY A REPAIR SHOP AS A CONDITION TO
 DOING REPAIR WORK; DEFINING GLASS BROKER; PROHIBITING THE
 ESTABLISHMENT OF A PRICE TO BE MET BY A GLASS REPAIR SHOP
 THAT AS A CONDITION TO DOING GLASS REPLACEMENT OR GLASS
REPAIR WORK WHEN THE PRICE IS BELOW THE LOWEST PREVAILING
MARKET PRICE; PROHIBITING PERSONS WHO SELL, REPLACE, OR
 REPAIR AUTOMOBILE GLASS FROM OFFERING CREDITS---AGAINST
INSURANCE---DEDUCTIBLES INCENTIVES; PROVIDING PENALTIES FOR
 VIOLATIONS; AND AMENDING SECTIONS 30-14-222, 30-14-223, AND
 30-14-224, ---MEA GRANTING ENFORCEMENT AUTHORITY TO THE

INSURANCE COMMISSIONER."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Designation of specific repair
shops prohibited -- lists allowed. (1) (a) An insurance
 company, including its agents and adjusters, that issues or
 renews a policy of insurance in this state covering, in
 whole or part, a motor vehicle may not:

(A) require or recommend that a person insured under
 the policy use a particular company or location for
 providing automobile glass replacement, repair services, or
 products insured in whole or part by the policy; OR

(b) An insurance company, including its agents and
 adjusters, may not engage in any act or practice of
 intimidation, coercion, threat, incentive, or inducement for
 or against an insured person to use a particular company or
 location to provide automobile glass replacement, GLASS
 repair services, or GLASS products INSURED IN WHOLE OR IN
PART UNDER THE TERMS OF AN INSURANCE POLICY.

(2) (a) An insurance company may provide an insured
 with a list that includes the names of particular companies
 or locations providing automobile glass replacement, GLASS
 repair services, or GLASS products if SOME OF the listed
 companies or locations are reasonably close and convenient
 to the insured and if none of the companies or locations on

the list have entered into an arrangement with any other company or location on the list with respect to prices or other aspects of furnishing services or products. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) If a list is provided, the insurance company or its agents or adjusters shall, when a claim wholly or partially reimbursable under the insurance policy is made by the insured, provide oral and written disclosure that a nonlisted company or location may be used MAY USE A NONLISTED SHOP OR LOCATION at the insured's sole discretion, and that SUBJECT TO THE PROVISIONS OF SUBSECTIONS (2)(C) AND (3), the insurance company will fully and promptly pay, at no less than the lowest prevailing market price as defined in [section 2], for the cost of automobile glass replacement, GLASS repair services, or GLASS products provided, less any deductible under the terms of the policy. If the insured elects to use a nonlisted company or location, the insurance company may not impose upon the insured any requirements, including obtaining written estimates, not required if the insured elects to use a listed company or location.

(C) IF THE INSURED DOES NOT USE A LIST AS PROVIDED IN SUBSECTION (2)(A), THE INSURER MAY REQUIRE THE INSURED TO

OBTAIN NOT MORE THAN THREE COMPETITIVE BIDS TO ESTABLISH THE COST OF AUTOMOBILE GLASS REPLACEMENT, GLASS REPAIR SERVICES, OR GLASS PRODUCTS PROVIDED.

(3) THIS SECTION DOES NOT REQUIRE AN INSURER TO PAY MORE FOR AUTOMOBILE GLASS REPLACEMENT, GLASS REPAIR SERVICES, OR GLASS PRODUCTS THAN THE LOWEST PREVAILING MARKET PRICE AS DEFINED IN [SECTION 2].

(3)(4) Notwithstanding the provisions of subsections (1) and (2) THROUGH (3), an insurance company may agree to pay the full cost of glass replacement or repair.

NEW SECTION. Section 2. Lowest prevailing market price. For purposes of [sections 1 and 3], "lowest prevailing market price" means the lowest market price in a local area for similarly situated companies or locations providing comparable automobile glass replacement, repair services, or products without taking into consideration companies or locations that have arrangements with one another with respect to prices or other aspects of furnishing glass replacement, repair services, or products. The lowest prevailing market price may not be less than cost as provided in 30-14-209.

NEW SECTION. Section 3. Prohibited activities -- GLASS BROKER DEFINED. (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with a company to manage

handier--or--arrange--automobile--glass--replacement--or--repair work;

{b}{(A)} establish an agreement with a company to act as an-agent A GLASS BROKER for the insurance company under which the insurance-company-or-the-agent GLASS BROKER sets a price that must be met by a GLASS repair shop as a condition for doing glass replacement or GLASS repair work for the insurance company;

{c}{(B)} establish an agreement with any company that requires a GLASS repair shop to bill through the company as a condition of doing glass replacement or GLASS repair work; or

{d}{(C)} establish a price that must be met by a GLASS repair shop as a condition for doing glass replacement or GLASS repair work that is below the lowest prevailing market price as provided in [section 2].

(2) A company may not manage, handle, or arrange automobile glass replacement or GLASS repair work for which the company retains a percentage of the claim OR A SET FEE paid by the insurance company to the GLASS repair shop or bills--the--insurance-company for an amount in excess of the amount paid to the GLASS repair shop.

(3) AS USED IN THIS SECTION, "GLASS BROKER" MEANS AN AUTOMOBILE GLASS COMPANY THAT ACTS AS A THIRD-PARTY AGENT FOR THE INSURER FOR THE PURPOSE OF ENTERING INTO AGREEMENTS

WITH OTHER AUTOMOBILE GLASS DEALERS TO PERFORM GLASS REPLACEMENT OR GLASS REPAIR WORK.

NEW SECTION. Section 4. Rebates AND INCENTIVES prohibited -- advertising allowed. (1) A person engaged in the sale, repair, or replacement of automobile glass may not:

(A) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy; OR

(B) PAY A SUM OR INCENTIVE TO AN INDIVIDUAL OR ENTITY FOR DIRECTING GLASS REPLACEMENT OR REPAIR OR THE PURCHASE OF A GLASS PRODUCT.

(2) A person or association of persons engaged in the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

~~Section-5--Section-30-14-222, MCA, is amended to read:~~
~~"30-14-222. Injunctions--damages--production--of evidence--(1) Any A person, if injured thereby by an act or the attorney general may maintain an action to enjoin a continuance of an act in violation of 30-14-205 through 30-14-210 or {sections 1 through 4} and for the recovery of damages if in such the action the court finds that the defendant is violating or has violated any of the provisions of 30-14-205 through 30-14-210 or {sections 1 through 4}, it shall enjoin the defendant from a continuance thereof of the~~

1 ~~violation. It is not necessary to allege or prove actual~~
2 ~~damages to the plaintiff.~~

3 {2}--In addition to such injunctive relief, the
4 plaintiff is entitled to recover from the defendant three
5 times the amount of actual damages sustained.

6 {3}--A defendant in an action brought under this section
7 may be required to testify under the Montana Rules of Civil
8 Procedure. In addition, the books and records of any such
9 the defendant may be brought into court and introduced into
10 evidence by reference. No information information so
11 obtained may not be used against the defendant as a basis
12 for a misdemeanor prosecution under 30-14-205 through
13 30-14-210, {sections 1 through 4}, or and 30-14-224.

14 Section 6, Section 30-14-223, MCA, is amended to read:

15 "30-14-223. Department to institute suit. Upon the
16 third violation of any of the provisions of 30-14-205
17 through 30-14-210 or {sections 1 through 4} by any a
18 business, the department shall institute proper suits or quo
19 warrant proceedings in a court of competent jurisdiction
20 for the forfeiture of its charter, rights, franchises or
21 privileges and powers exercised by such the business and to
22 permanently enjoin it from transacting business in this
23 state. If in such the action the court finds that the
24 business is violating or has violated any of the provisions
25 of 30-14-205 through 30-14-210 or {sections 1 through 4}, it

1 shall enjoin the business from doing business in this state
2 permanently or for such a time as the court orders or shall
3 annul the charter or revoke the franchise of such the
4 business."

5 Section 7, Section 30-14-224, MCA, is amended to read:

6 "30-14-224. Penalties. {1} Except as otherwise provided
7 in this section, a person, whether as principal, agent,
8 officer or director, who violates any of the provisions of
9 30-14-206 through 30-14-210 or {sections 1 through 4} is
10 guilty of a misdemeanor for each single violation and upon
11 conviction thereof shall be fined not less than \$100 or more
12 than \$1,000 or imprisoned for a term not to exceed 6 months,
13 or both.

14 {2} A violation of 30-14-205 is punishable by
15 imprisonment in the county jail for a period not less than
16 24 hours or more than 1 year or by fine not exceeding
17 \$25,000 or both.

18 {3} When there is a violation of 30-14-216, in addition
19 to the penalty specified in subsection {1}, the court before
20 which a conviction is had shall, within 10 days after
21 judgment of conviction is given, forward a certified copy of
22 the judgment to the department of agriculture and that
23 department shall revoke any license issued to the person so
24 convicted. In such case no A new license may not be granted
25 to the person whose license is revoked or to anyone either

1 ~~directly--or-indirectly-engaged-with-him that-person in-such~~
2 ~~that business-for-a-period-of-1-year."~~

3 NEW SECTION. SECTION 5. DESIST ORDERS FOR PROHIBITED
4 PRACTICES. VIOLATIONS OF [SECTIONS 1 THROUGH 4] ARE SUBJECT
5 TO CEASE AND DESIST ORDERS OF THE COMMISSIONER ISSUED UNDER
6 33-18-1004.

7 NEW SECTION. Section 6. Codification instruction. (1)
8 [Sections 1 through 4] are intended to be codified as an
9 integral part of Title 30 33, chapter 14 18, part 2, and the
10 provisions of Title 30 33, chapter 14 18, part 2, apply to
11 [sections 1 through 4].

12 (2) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN
13 INTEGRAL PART OF TITLE 33, CHAPTER 18, PART 10, AND THE
14 PROVISIONS OF TITLE 33, CHAPTER 18, PART 10, APPLY TO
15 [SECTION 5].

-End-

HOUSE BILL NO. 273

INTRODUCED BY DOLEZAL, GAGE, CHRISTIAENS, RYAN, T. NELSON,
 WYATT, SCHYE, FRANKLIN, WILSON, PAVLOVICH, TUSS, R. JOHNSON,
 DRISCOLL, WALLIN, TVEIT, S. RICE, DOWELL, BARNHART, MCCULLOCH,
 GALVIN, WANZENRIED, MCCAFFREE, STRIZICH, DOHERTY

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING MOTOR
 VEHICLE INSURANCE COMPANIES FROM DIRECTING INSURED TO
 SPECIFIC COMPANIES OR LOCATIONS FOR AUTOMOBILE GLASS
 REPLACEMENT, REPAIR SERVICE, OR PRODUCTS; PROHIBITING THE
 ESTABLISHMENT OF AN AGREEMENT WITH A COMPANY TO ARRANGE
 PAYMENT THROUGH A THIRD PARTY FOR AUTOMOBILE GLASS
 REPLACEMENT OR REPAIR SERVICE; PROHIBITING A COMPANY FROM
 ACTING AS AGENT GLASS BROKER FOR AN INSURANCE COMPANY WHEN
 EITHER THE AGENT--OR--INSURANCE--COMPANY GLASS BROKER SETS A
 PRICE THAT MUST BE MET BY A REPAIR SHOP AS A CONDITION TO
 DOING REPAIR WORK; DEFINING GLASS BROKER; PROHIBITING THE
 ESTABLISHMENT OF A PRICE TO BE MET BY A GLASS REPAIR SHOP
 THAT AS A CONDITION TO DOING GLASS REPLACEMENT OR GLASS
REPAIR WORK WHEN THE PRICE IS BELOW THE LOWEST PREVAILING
MARKET PRICE; PROHIBITING PERSONS WHO SELL, REPLACE, OR
 REPAIR AUTOMOBILE GLASS FROM OFFERING CREDITS---AGAINST
INSURANCE---DEDUCTIBLES INCENTIVES; PROVIDING PENALTIES FOR
 VIOLATIONS; AND AMENDING SECTIONS 30-14-222, 30-14-223, AND
 30-14-224, ---MCA GRANTING ENFORCEMENT AUTHORITY TO THE

INSURANCE COMMISSIONER."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Designation of specific repair
shops prohibited -- lists allowed. (1) ~~that~~ An insurance
 company, including its agents and adjusters, that issues or
 renews a policy of insurance in this state covering, in
 whole or part, a motor vehicle may not:

(A) require or recommend that a person insured under
 the policy use a particular company or location for
 providing automobile glass replacement, GLASS repair
 services, or GLASS products insured in whole or part by the
 policy; OR

(b) An--insurance--company,--including--its--agents--and
 adjusters,--may--not engage in any act or practice of
 intimidation, coercion, threat, incentive, or inducement for
 or against an insured person to use a particular company or
 location to provide automobile glass replacement, GLASS
 repair services, or GLASS products INSURED IN WHOLE OR IN
PART UNDER THE TERMS OF AN INSURANCE POLICY.

(2) (a) An insurance company may provide an insured
 with a list that includes the names of particular companies
 or locations providing automobile glass replacement, GLASS
 repair services, or GLASS products if SOME OF the listed
 companies or locations are reasonably close and convenient

to the insured and if none of the companies or locations on the list have entered into an arrangement with any other company or location on the list with respect to prices or other aspects of furnishing services or products. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) If a list is provided, the insurance company or its agents or adjusters shall, when a claim wholly or partially reimbursable under the insurance policy is made by the insured, provide oral and written disclosure that a nonlisted company or location may be used MAY USE A NONLISTED SHOP OR LOCATION at the insured's sole discretion, and that SUBJECT TO THE PROVISIONS OF SUBSECTIONS (2)(C) AND (3), the insurance company will fully and promptly pay, at no less than the lowest prevailing market price as defined in section 2, for the cost of automobile glass replacement, GLASS repair services, or GLASS products provided, less any deductible under the terms of the policy. If the insured elects to use a nonlisted company or location, the insurance company may not impose upon the insured any requirements, including obtaining written estimates, not required if the insured elects to use a listed company or location.

(C) IF THE INSURED DOES NOT USE A LIST AS PROVIDED IN

SUBSECTION (2)(A), THE INSURER MAY REQUIRE THE INSURED TO OBTAIN NOT MORE THAN THREE COMPETITIVE BIDS TO ESTABLISH THE COST OF AUTOMOBILE GLASS REPLACEMENT, GLASS REPAIR SERVICES, OR GLASS PRODUCTS PROVIDED.

(3) THIS SECTION DOES NOT REQUIRE AN INSURER TO PAY MORE FOR AUTOMOBILE GLASS REPLACEMENT, GLASS REPAIR SERVICES, OR GLASS PRODUCTS THAN THE LOWEST PREVAILING MARKET PRICE AS DEFINED IN [SECTION 2].

(3)(4) Notwithstanding the provisions of subsections (1) and (2) THROUGH (3), an insurance company may agree to pay the full cost of glass replacement or repair.

NEW SECTION. Section 2. Lowest prevailing market price. For purposes of [sections 1 and 3], "lowest prevailing market price" means the lowest market price in a local area for similarly situated companies or locations providing comparable automobile glass replacement, repair services, or products without taking into consideration companies or locations that have arrangements with one another with respect to prices or other aspects of furnishing glass replacement, repair services, or products. The lowest prevailing market price may not be less than cost as provided in 30-14-209.

NEW SECTION. Section 3. Prohibited activities -- GLASS BROKER DEFINED. (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

~~{a}~~ establish an agreement with a company to manage, handle, or arrange automobile glass replacement or repair work;

~~{b}~~ (A) establish an agreement with a company to act as an agent A GLASS BROKER for the insurance company under which the insurance company or the agent GLASS BROKER sets a price that must be met by a GLASS repair shop as a condition for doing glass replacement or GLASS repair work for the insurance company;

~~{c}~~ (B) establish an agreement with any company that requires a GLASS repair shop to bill through the company as a condition of doing glass replacement or GLASS repair work; or

~~{d}~~ (C) establish a price that must be met by a GLASS repair shop as a condition for doing glass replacement or GLASS repair work that is below the lowest prevailing market price as provided in [section 2].

(2) A company may not manage, handle, or arrange automobile glass replacement or GLASS repair work for which the company retains a percentage of the claim OR A SET FEE paid by the insurance company to the GLASS repair shop or bills the insurance company for an amount in excess of the amount paid to the GLASS repair shop.

(3) AS USED IN THIS SECTION, "GLASS BROKER" MEANS AN AUTOMOBILE GLASS COMPANY THAT ACTS AS A THIRD-PARTY AGENT

FOR THE INSURER FOR THE PURPOSE OF ENTERING INTO AGREEMENTS WITH OTHER AUTOMOBILE GLASS DEALERS TO PERFORM GLASS REPLACEMENT OR GLASS REPAIR WORK.

NEW SECTION. Section 4. Rebates AND INCENTIVES prohibited -- advertising allowed. (1) A person engaged in the sale, repair, or replacement of automobile glass may not:

(A) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy; OR

(B) PAY A SUM OR INCENTIVE TO AN INDIVIDUAL OR ENTITY FOR DIRECTING GLASS REPLACEMENT OR REPAIR OR THE PURCHASE OF A GLASS PRODUCT.

(2) A person or association of persons engaged in the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

Section 5. Section 30-14-222, MCA, is amended to read:

"30-14-222. Injunctions-----damages-----production of evidence.-(1)-Any A person, if injured thereby by an act, or the attorney general may maintain an action to enjoin a continuance of an act in violation of 30-14-205 through 30-14-210 or [sections 1 through 4] and for the recovery of damages--if in such the action the court finds that the defendant is violating or has violated any of the provisions of 30-14-205 through 30-14-210 or [sections 1 through 4], it

1 shall enjoin the defendant from a continuance thereof of the
2 violation. It is not necessary to allege or prove actual
3 damages to the plaintiff.

4 {2}--In addition to such injunctive relief, the
5 plaintiff is entitled to recover from the defendant three
6 times the amount of actual damages sustained.

7 {3}--A defendant in an action brought under this section
8 may be required to testify under the Montana Rules of Civil
9 Procedure. In addition, the books and records of any such
10 the defendant may be brought into court and introduced into
11 evidence by reference. No information information so
12 obtained may not be used against the defendant as a basis
13 for a misdemeanor prosecution under 30-14-205 through
14 30-14-218, {sections 1 through 4}, or and 30-14-224.

15 Section 6, Section 30-14-223, MCA, is amended to read:

16 "30-14-223. Department to institute suit. Upon the
17 third violation of any of the provisions of 30-14-205
18 through 30-14-218 or {sections 1 through 4} by any a
19 business, the department shall institute proper suits or quo
20 warranto proceedings in a court of competent jurisdiction
21 for the forfeiture of its charter, rights, franchises or
22 privileges, and powers exercised by such the business and to
23 permanently enjoin it from transacting business in this
24 state. If in such the action the court finds that the
25 business is violating or has violated any of the provisions

1 of 30-14-205 through 30-14-218 or {sections 1 through 4}, it
2 shall enjoin the business from doing business in this state
3 permanently or for such a time as the court orders or shall
4 annul the charter or revoke the franchise of such the
5 business."

6 Section 7, Section 30-14-224, MCA, is amended to read:

7 "30-14-224. Penalties. {1} Except as otherwise provided
8 in this section, a person, whether as principal, agent,
9 officer, or director, who violates any of the provisions of
10 30-14-206 through 30-14-218 or {sections 1 through 4} is
11 guilty of a misdemeanor for each single violation and upon
12 conviction thereof shall be fined not less than \$100 or more
13 than \$1,000 or imprisoned for a term not to exceed 6 months,
14 or both.

15 {2} A violation of 30-14-205 is punishable by
16 imprisonment in the county jail for a period not less than
17 24 hours or more than 1 year or by fine not exceeding
18 \$25,000, or both.

19 {3} When there is a violation of 30-14-216, in addition
20 to the penalty specified in subsection {1}, the court before
21 which a conviction is had shall, within 10 days after
22 judgment of conviction is given, forward a certified copy of
23 the judgment to the department of agriculture and that
24 department shall revoke any license issued to the person so
25 convicted. In such case no A new license may not be granted

1 ~~to--the--person-whose-license-is-revoked-or-to-anyone-either~~
2 ~~directly-or-indirectly-engaged-with-him~~ that person ~~in--such~~
3 ~~that business-for-a-period-of-1-year."~~

4 NEW SECTION. SECTION 5. DESIST ORDERS FOR PROHIBITED
5 PRACTICES. VIOLATIONS OF [SECTIONS 1 THROUGH 4] ARE SUBJECT
6 TO CEASE AND DESIST ORDERS OF THE COMMISSIONER ISSUED UNDER
7 33-18-1004.

8 NEW SECTION. Section 6. Codification instruction. (1)
9 [Sections 1 through 4] are intended to be codified as an
10 integral part of Title 30 33, chapter 14 18, part 2, and the
11 provisions of Title 30 33, chapter 14 18, part 2, apply to
12 [sections 1 through 4].

13 (2) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN
14 INTEGRAL PART OF TITLE 33, CHAPTER 18, PART 10, AND THE
15 PROVISIONS OF TITLE 33, CHAPTER 18, PART 10, APPLY TO
16 [SECTION 5].

-End-


SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 16, 1993

Page 2 of 2
March 16, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 273 (first reading copy -- blue), respectfully report that House Bill No. 273 be amended as follows and as so amended be concurred in.

Signed: 
Senator John J.D. Lynch, Chair

That such amendments read:

1. Title, line 10.
Following: "REPLACEMENT,"
Insert: "GLASS"
Following: "OR"
Insert: "GLASS"
2. Title, line 13.
Following: "OR"
Insert: "GLASS"
3. Title, line 16.
Following: "BY A"
Insert: "GLASS"
4. Title, line 17.
Following: "DOING"
Insert: "GLASS"
5. Title, page 2, line 1.
Following: "COMMISSIONER"
Insert: "AND THE DEPARTMENT OF COMMERCE"
6. Page 2, line 6.
Following: "its"
Strike: "agents"
Insert: "producers"
7. Page 2, line 9.
Strike: "or recommend"
8. Page 2, line 16.
Following: "coercion,"
Insert: "or"
Following: "threat"
Strike: ", incentive, or inducement"

9. Page 3, line 13.
Strike: "~~SHOP~~"
Insert: "company"

10. Page 5, line 4.
Strike: "a company"
Insert: "any person"

11. Page 5, line 10.
Strike: "company"
Insert: "person"

12. Page 5, line 11.
Strike: "the company"
Insert: "that person"

13. Page 5, lines 18 through 23.
Strike: Subsection (2) in its entirety
Renumber: subsequent subsection

14. Page 6, lines 4 and 5.
Strike: "~~Rebates AND INCENTIVES prohibited~~"
Insert: "Prohibited practices"

15. Page 6, following line 16.
Insert: "(3) A person may not manage, handle, or arrange automobile glass replacement or glass repair work for which the person retains a percentage of the claim or a set fee paid by the insurance company to the glass repair shop for an amount in excess of the amount paid to the glass repair shop."

16. Page 9, lines 5, 9, and 12.
Strike: "4"
Insert: "3"

17. Page 9, following line 12.
Insert: "(2) [Section 4] is intended to be codified as an integral part of Title 30, chapter 14, part 2, and the provisions of Title 30, chapter 14, part 2, apply to [section 4]."
Renumber: subsequent subsection

-END-

 Amd. Coord.
to Sec. of Senate  Senator Carrying Bill

591525SC.San

SENATE
HB 273
591525SC.San

HOUSE BILL NO. 273

INTRODUCED BY DOLEZAL, GAGE, CHRISTIAENS, RYAN, T. NELSON,
 WYATT, SCHYE, FRANKLIN, WILSON, PAVLOVICH, TUSS, R. JOHNSON,
 DRISCOLL, WALLIN, TVEIT, S. RICE, DOWELL, BARNHART, MCCULLOCH,
 GALVIN, WANZENRIED, MCCAFFREE, STRIZICH, DOHERTY

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING MOTOR
 VEHICLE INSURANCE COMPANIES FROM DIRECTING INSURED TO
 SPECIFIC COMPANIES OR LOCATIONS FOR AUTOMOBILE GLASS
 REPLACEMENT, GLASS REPAIR SERVICE, OR GLASS PRODUCTS;
 PROHIBITING THE ESTABLISHMENT OF AN AGREEMENT WITH A COMPANY
 TO ARRANGE PAYMENT THROUGH A THIRD PARTY FOR AUTOMOBILE
 GLASS REPLACEMENT OR GLASS REPAIR SERVICE; PROHIBITING A
 COMPANY FROM ACTING AS AGENT GLASS BROKER FOR AN INSURANCE
 COMPANY WHEN EITHER THE AGENT--OR--INSURANCE--COMPANY GLASS
BROKER SETS A PRICE THAT MUST BE MET BY A GLASS REPAIR SHOP
 AS A CONDITION TO DOING GLASS REPAIR WORK; DEFINING GLASS
BROKER; PROHIBITING THE ESTABLISHMENT OF A PRICE TO BE MET
 BY A GLASS REPAIR SHOP THAT AS A CONDITION TO DOING GLASS
REPLACEMENT OR GLASS REPAIR WORK WHEN THE PRICE IS BELOW THE
 LOWEST PREVAILING MARKET PRICE; PROHIBITING PERSONS WHO
 SELL, REPLACE, OR REPAIR AUTOMOBILE GLASS FROM OFFERING
~~CREDITS--AGAINST-INSURANCE-DEDUCTIBLES~~ INCENTIVES; PROVIDING
 PENALTIES FOR VIOLATIONS; AND ~~AMENDING--SECTIONS--30-14-2227~~
~~30-14-2237-AND-30-14-2247-MCA~~ GRANTING ENFORCEMENT AUTHORITY

TO THE INSURANCE COMMISSIONER AND THE DEPARTMENT OF
COMMERCE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Designation of specific repair
 shops prohibited -- lists allowed. (1) (a) An insurance
 company, including its agents PRODUCERS and adjusters, that
 issues or renews a policy of insurance in this state
 covering, in whole or part, a motor vehicle may not:

(A) require or--recommend that a person insured under
 the policy use a particular company or location for
 providing automobile glass replacement, GLASS repair
 services, or GLASS products insured in whole or part by the
 policy; OR

(b) An--insurance--company,--including--its--agents--and
 adjusters,--may--not engage in any act or practice of
 intimidation, coercion, OR threat,--incentive,--or--inducement
 for or against an insured person to use a particular company
 or location to provide automobile glass replacement, GLASS
 repair services, or GLASS products INSURED IN WHOLE OR IN
PART UNDER THE TERMS OF AN INSURANCE POLICY.

(2) (a) An insurance company may provide an insured
 with a list that includes the names of particular companies
 or locations providing automobile glass replacement, GLASS
 repair services, or GLASS products if SOME OF the listed

companies or locations are reasonably close and convenient to the insured and if none of the companies or locations on the list have entered into an arrangement with any other company or location on the list with respect to prices or other aspects of furnishing services or products. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) If a list is provided, the insurance company or its agents or adjusters shall, when a claim wholly or partially reimbursable under the insurance policy is made by the insured, provide oral and written disclosure that a nonlisted company or location may be used MAY USE A NONLISTED SHOP COMPANY OR LOCATION at the insured's sole discretion, and that SUBJECT TO THE PROVISIONS OF SUBSECTIONS (2)(C) AND (3), the insurance company will fully and promptly pay, at no less than the lowest prevailing market price as defined in [section 2], for the cost of automobile glass replacement, GLASS repair services, or GLASS products provided, less any deductible under the terms of the policy. If the insured elects to use a nonlisted company or location, the insurance company may not impose upon the insured any requirements, including obtaining written estimates, not required if the insured elects to use a listed company or location.

(C) IF THE INSURED DOES NOT USE A LIST AS PROVIDED IN SUBSECTION (2)(A), THE INSURER MAY REQUIRE THE INSURED TO OBTAIN NOT MORE THAN THREE COMPETITIVE BIDS TO ESTABLISH THE COST OF AUTOMOBILE GLASS REPLACEMENT, GLASS REPAIR SERVICES, OR GLASS PRODUCTS PROVIDED.

(3) THIS SECTION DOES NOT REQUIRE AN INSURER TO PAY MORE FOR AUTOMOBILE GLASS REPLACEMENT, GLASS REPAIR SERVICES, OR GLASS PRODUCTS THAN THE LOWEST PREVAILING MARKET PRICE AS DEFINED IN [SECTION 2].

(3)(4) Notwithstanding the provisions of subsections (1) and (2) THROUGH (3), an insurance company may agree to pay the full cost of glass replacement or repair.

NEW SECTION. Section 2. Lowest prevailing market price. For purposes of [sections 1 and 3], "lowest prevailing market price" means the lowest market price in a local area for similarly situated companies or locations providing comparable automobile glass replacement, repair services, or products without taking into consideration companies or locations that have arrangements with one another with respect to prices or other aspects of furnishing glass replacement, repair services, or products. The lowest prevailing market price may not be less than cost as provided in 30-14-209.

NEW SECTION. Section 3. Prohibited activities -- GLASS BROKER DEFINED. (1) It is unlawful for an insurance company,

1 individually or with others, to directly or indirectly:

2 ~~{a}--establish-an-agreement-with-a-company--to--manager~~
3 ~~handle,--or--arrange--automobile-glass-replacement-or-repair~~
4 ~~work;~~

5 {b}(A) establish an agreement with a company ANY PERSON
6 to act as an agent A GLASS BROKER for the insurance company
7 under which the insurance company or the agent GLASS BROKER
8 sets a price that must be met by a GLASS repair shop as a
9 condition for doing glass replacement or GLASS repair work
10 for the insurance company;

11 {c}(B) establish an agreement with any company PERSON
12 that requires a GLASS repair shop to bill through the
13 company THAT PERSON as a condition of doing glass
14 replacement or GLASS repair work; or

15 {d}(C) establish a price that must be met by a GLASS
16 repair shop as a condition for doing glass replacement or
17 GLASS repair work that is below the lowest prevailing market
18 price as provided in [section 2].

19 ~~{2}--A-company--may--not--manage,--handle,--or--arrange~~
20 ~~automobile--glass-replacement-or GLASS repair-work-for-which~~
21 ~~the-company-retains-a-percentage-of-the-claim OR-A--SET--FEE~~
22 ~~paid--by--the--insurance-company-to-the GLASS repair-shop-or~~
23 ~~bills-the-insurance-company-for-an-amount-in-excess--of--the~~
24 ~~amount-paid-to-the GLASS repair-shop;~~

25 {3}(2) AS USED IN THIS SECTION, "GLASS BROKER" MEANS AN

1 AUTOMOBILE GLASS COMPANY THAT ACTS AS A THIRD-PARTY AGENT
2 FOR THE INSURER FOR THE PURPOSE OF ENTERING INTO AGREEMENTS
3 WITH OTHER AUTOMOBILE GLASS DEALERS TO PERFORM GLASS
4 REPLACEMENT OR GLASS REPAIR WORK.

5 NEW SECTION. Section 4. Rebates AND INCENTIVES
6 prohibited PROHIBITED PRACTICES -- advertising allowed. (1)
7 A person engaged in the sale, repair, or replacement of
8 automobile glass may not;

9 (A) advertise, promise to provide, or offer any coupon,
10 credit, or rebate to pay all or part of an insurance
11 deductible under a casualty or property insurance policy; OR

12 (B) PAY A SUM OR INCENTIVE TO AN INDIVIDUAL OR ENTITY
13 FOR DIRECTING GLASS REPLACEMENT OR REPAIR OR THE PURCHASE OF
14 A GLASS PRODUCT.

15 (2) A person or association of persons engaged in the
16 sale, repair, or replacement of automobile glass may
17 advertise services as to quality, service, and safety.

18 (3) A PERSON MAY NOT MANAGE, HANDLE, OR ARRANGE
19 AUTOMOBILE GLASS REPLACEMENT OR GLASS REPAIR WORK FOR WHICH
20 THE PERSON RETAINS A PERCENTAGE OF THE CLAIM OR A SET FEE
21 PAID BY THE INSURANCE COMPANY TO THE GLASS REPAIR SHOP FOR
22 AN AMOUNT IN EXCESS OF THE AMOUNT PAID TO THE GLASS REPAIR
23 SHOP.

24 Section 5--Section 30-14-222, MEA, is amended to read--
25 "30-14-222--Injunctions-----damages-----production-of

evidence. (1) Any A person, if injured thereby by an act, or the attorney general may maintain an action to enjoin a continuance of an act in violation of 30-14-205 through 30-14-218 or {sections 1 through 4} and for the recovery of damages. If in such the action the court finds that the defendant is violating or has violated any of the provisions of 30-14-205 through 30-14-218 or {sections 1 through 4}, it shall enjoin the defendant from a continuance thereof of the violation. It is not necessary to allege or prove actual damages to the plaintiff.

(2) In addition to such injunctive relief, the plaintiff is entitled to recover from the defendant three times the amount of actual damages sustained.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition, the books and records of any such the defendant may be brought into court and introduced into evidence by reference. No information information so obtained may not be used against the defendant as a basis for a misdemeanor prosecution under 30-14-205 through 30-14-218, {sections 1 through 4}, or and 30-14-224.

Section 6, Section 30-14-223, MCA, is amended to read:

"30-14-223. Department to institute suit. Upon the third violation of any of the provisions of 30-14-205 through 30-14-218 or {sections 1 through 4} by any a

business, the department shall institute proper suits or quo warranto proceedings in a court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges and powers exercised by such the business and to permanently enjoin it from transacting business in this state. If in such the action the court finds that the business is violating or has violated any of the provisions of 30-14-205 through 30-14-218 or {sections 1 through 4}, it shall enjoin the business from doing business in this state permanently or for such a time as the court orders or shall annul the charter or revoke the franchise of such the business."

Section 7, Section 30-14-224, MCA, is amended to read:

"30-14-224. Penalties. (1) Except as otherwise provided in this section, a person, whether as principal, agent, officer or director, who violates any of the provisions of 30-14-206 through 30-14-218 or {sections 1 through 4} is guilty of a misdemeanor for each single violation and upon conviction thereof shall be fined not less than \$100 or more than \$1,000 or imprisoned for a term not to exceed 6 months, or both.

(2) A violation of 30-14-205 is punishable by imprisonment in the county jail for a period not less than 24 hours or more than 1 year or by fine not exceeding \$25,000, or both.

1 ~~{3}--When there is a violation of 30-14-216, in addition~~
 2 ~~to the penalty specified in subsection {1}, the court before~~
 3 ~~which a conviction is had shall, within 10 days after~~
 4 ~~judgment of conviction is given, forward a certified copy of~~
 5 ~~the judgment to the department of agriculture and that~~
 6 ~~department shall revoke any license issued to the person so~~
 7 ~~convicted. In such case no~~ A new license may not be granted
 8 ~~to the person whose license is revoked or to anyone either~~
 9 ~~directly or indirectly engaged with him that person in such~~
 10 ~~that business for a period of 1 year."~~

11 NEW SECTION. **SECTION 5.** DESIST ORDERS FOR PROHIBITED
 12 PRACTICES. VIOLATIONS OF [SECTIONS 1 THROUGH 4 3] ARE
 13 SUBJECT TO CEASE AND DESIST ORDERS OF THE COMMISSIONER
 14 ISSUED UNDER 33-18-1004.

15 NEW SECTION. **Section 6.** Codification instruction. (1)
 16 [Sections 1 through 4 3] are intended to be codified as an
 17 integral part of Title 30 33, chapter 14 18, part 2, and the
 18 provisions of Title 30 33, chapter 14 18, part 2, apply to
 19 [sections 1 through 4 3].

20 (2) [SECTION 4] IS INTENDED TO BE CODIFIED AS AN
 21 INTEGRAL PART OF TITLE 30, CHAPTER 14, PART 2, AND THE
 22 PROVISIONS OF TITLE 30, CHAPTER 14, PART 2, APPLY TO
 23 [SECTION 4].

24 {2}{3} [SECTION 5] IS INTENDED TO BE CODIFIED AS AN
 25 INTEGRAL PART OF TITLE 33, CHAPTER 18, PART 10, AND THE

1 PROVISIONS OF TITLE 33, CHAPTER 18, PART 10, APPLY TO
 2 [SECTION 5].

-End-

Free Conference Committee
on House Bill 273
Report No. 1, April 7, 1993

Page 1 of 1

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 273 and recommend as follows:

1. Title, line 24.

Strike: "AND"

2. Title, page 2, line 2.

Following: "COMMERCE"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 10, following line 2.

Insert: "NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval."

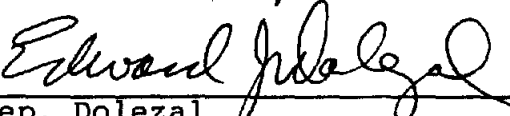
And this Free Conference Committee report be adopted.


For the House:

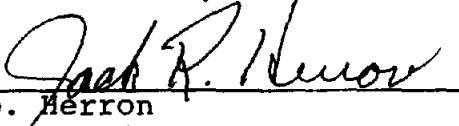
For the Senate:

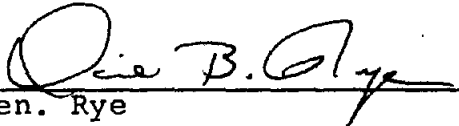

Rep. Ellis, Chair


Sen. Lynch, Chair


Rep. Dolezal


Sen. Wilson


Rep. Herron


Sen. Rye

ADOPT

REJECT

F.C.C.#1
HB 273

781312CC.Hpf

47-93
2:00

HOUSE BILL NO. 273

INTRODUCED BY DOLEZAL, GAGE, CHRISTIAENS, RYAN, T. NELSON,
 WYATT, SCHYE, FRANKLIN, WILSON, PAVLOVICH, TUSS, R. JOHNSON,
 DRISCOLL, WALLIN, TVEIT, S. RICE, DOWELL, BARNHART, MCCULLOCH,
 GALVIN, WANZENRIED, MCCAFFREE, STRIZICH, DOHERTY

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING MOTOR
 VEHICLE INSURANCE COMPANIES FROM DIRECTING INSURED TO
 SPECIFIC COMPANIES OR LOCATIONS FOR AUTOMOBILE GLASS
 REPLACEMENT, GLASS REPAIR SERVICE, OR GLASS PRODUCTS;
 PROHIBITING THE ESTABLISHMENT OF AN AGREEMENT WITH A COMPANY
 TO ARRANGE PAYMENT THROUGH A THIRD PARTY FOR AUTOMOBILE
 GLASS REPLACEMENT OR GLASS REPAIR SERVICE; PROHIBITING A
 COMPANY FROM ACTING AS AGENT GLASS BROKER FOR AN INSURANCE
 COMPANY WHEN EITHER THE AGENT--OR--INSURANCE--COMPANY GLASS
BROKER SETS A PRICE THAT MUST BE MET BY A GLASS REPAIR SHOP
 AS A CONDITION TO DOING GLASS REPAIR WORK; DEFINING GLASS
BROKER; PROHIBITING THE ESTABLISHMENT OF A PRICE TO BE MET
 BY A GLASS REPAIR SHOP ~~THAT~~ AS A CONDITION TO DOING GLASS
REPLACEMENT OR GLASS REPAIR WORK WHEN THE PRICE IS BELOW THE
LOWEST PREVAILING MARKET PRICE; PROHIBITING PERSONS WHO
 SELL, REPLACE, OR REPAIR AUTOMOBILE GLASS FROM OFFERING
~~CREDITS--AGAINST--INSURANCE--DEDUCTIBLES~~ INCENTIVES; PROVIDING
 PENALTIES FOR VIOLATIONS; ~~AND AMENDING--SECTIONS--30-14-222,~~
~~30-14-223,--AND--30-14-224,--MCA~~ GRANTING ENFORCEMENT AUTHORITY

TO THE INSURANCE COMMISSIONER AND THE DEPARTMENT OF
COMMERCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Designation of specific repair
shops prohibited -- lists allowed. (1) ~~(a)~~ An insurance
 company, including its agents PRODUCERS and adjusters, that
 issues or renews a policy of insurance in this state
 covering, in whole or part, a motor vehicle may not:

(A) require ~~or--recommend~~ that a person insured under
 the policy use a particular company or location for
 providing automobile glass replacement, GLASS repair
 services, or GLASS products insured in whole or part by the
 policy; OR

(b) ~~An--insurance--company,--including--its--agents--and~~
~~adjusters,--may--not~~ engage in any act or practice of
 intimidation, coercion, OR ~~threat,--incentive,--or--inducement~~
 for or against an insured person to use a particular company
 or location to provide automobile glass replacement, GLASS
 repair services, or GLASS products INSURED IN WHOLE OR IN
PART UNDER THE TERMS OF AN INSURANCE POLICY.

(2) (a) An insurance company may provide an insured
 with a list that includes the names of particular companies
 or locations providing automobile glass replacement, GLASS
 repair services, or GLASS products if SOME OF the listed

companies or locations are reasonably close and convenient to the insured ~~and if none of the companies or locations on the list have entered into an arrangement with any other company or location on the list with respect to prices or other aspects of furnishing services or products.~~ The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) ~~if a list is provided, the insurance company or its agents or adjusters shall, when a claim wholly or partially reimbursable under the insurance policy is made by the~~ THE insured, ~~provide oral and written disclosure that a nonlisted company or location may be used~~ MAY USE A NONLISTED SHOP COMPANY OR LOCATION at the insured's sole discretion, and that SUBJECT TO THE PROVISIONS OF SUBSECTIONS (2)(C) AND (3), the insurance company will fully and promptly pay, ~~at no less than the lowest prevailing market price as defined in section 2,~~ for the cost of automobile glass replacement, GLASS repair services, or GLASS products provided, less any deductible under the terms of the policy. ~~If the insured elects to use a nonlisted company or location, the insurance company may not impose upon the insured any requirements, including obtaining written estimates, not required if the insured elects to use a listed company or location.~~

(C) IF THE INSURED DOES NOT USE A LIST AS PROVIDED IN SUBSECTION (2)(A), THE INSURER MAY REQUIRE THE INSURED TO OBTAIN NOT MORE THAN THREE COMPETITIVE BIDS TO ESTABLISH THE COST OF AUTOMOBILE GLASS REPLACEMENT, GLASS REPAIR SERVICES, OR GLASS PRODUCTS PROVIDED.

(3) THIS SECTION DOES NOT REQUIRE AN INSURER TO PAY MORE FOR AUTOMOBILE GLASS REPLACEMENT, GLASS REPAIR SERVICES, OR GLASS PRODUCTS THAN THE LOWEST PREVAILING MARKET PRICE AS DEFINED IN [SECTION 2].

~~(3)(4)~~ Notwithstanding the provisions of subsections (1) and ~~(2)~~ THROUGH (3), an insurance company may agree to pay the full cost of glass replacement or repair.

NEW SECTION. Section 2. Lowest prevailing market price. For purposes of [sections 1 and 3], "lowest prevailing market price" means the lowest market price in a local area ~~for similarly situated companies or locations providing comparable automobile glass replacement, repair services, or products without taking into consideration companies or locations that have arrangements with one another with respect to prices or other aspects of furnishing glass replacement, repair services, or products.~~ The lowest prevailing market price may not be less than cost as provided in 30-14-209.

NEW SECTION. Section 3. Prohibited activities -- GLASS BROKER DEFINED. (1) It is unlawful for an insurance company,

individually or with others, to directly or indirectly:

~~(a) establish an agreement with a company to manage, handle, or arrange automobile glass replacement or repair work;~~

~~(b)(A)~~ establish an agreement with a company ANY PERSON to act as an agent A GLASS BROKER for the insurance company under which the insurance company or the agent GLASS BROKER sets a price that must be met by a GLASS repair shop as a condition for doing glass replacement or GLASS repair work for the insurance company;

~~(c)(B)~~ establish an agreement with any company PERSON that requires a GLASS repair shop to bill through the company THAT PERSON as a condition of doing glass replacement or GLASS repair work; or

~~(d)(C)~~ establish a price that must be met by a GLASS repair shop as a condition for doing glass replacement or GLASS repair work that is below the lowest prevailing market price as provided in [section 2].

~~(2) A company may not manage, handle, or arrange automobile glass replacement or GLASS repair work for which the company retains a percentage of the claim OR A SET PER paid by the insurance company to the GLASS repair shop or bills the insurance company for an amount in excess of the amount paid to the GLASS repair shop;~~

~~(3)(2)~~ AS USED IN THIS SECTION, "GLASS BROKER" MEANS AN

AUTOMOBILE GLASS COMPANY THAT ACTS AS A THIRD-PARTY AGENT FOR THE INSURER FOR THE PURPOSE OF ENTERING INTO AGREEMENTS WITH OTHER AUTOMOBILE GLASS DEALERS TO PERFORM GLASS REPLACEMENT OR GLASS REPAIR WORK.

NEW SECTION. Section 4. Rebates AND INCENTIVES prohibited PROHIBITED PRACTICES -- advertising allowed. (1) A person engaged in the sale, repair, or replacement of automobile glass may not:

(A) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy; OR

(B) PAY A SUM OR INCENTIVE TO AN INDIVIDUAL OR ENTITY FOR DIRECTING GLASS REPLACEMENT OR REPAIR OR THE PURCHASE OF A GLASS PRODUCT.

(2) A person or association of persons engaged in the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A PERSON MAY NOT MANAGE, HANDLE, OR ARRANGE AUTOMOBILE GLASS REPLACEMENT OR GLASS REPAIR WORK FOR WHICH THE PERSON RETAINS A PERCENTAGE OF THE CLAIM OR A SET FEE PAID BY THE INSURANCE COMPANY TO THE GLASS REPAIR SHOP FOR AN AMOUNT IN EXCESS OF THE AMOUNT PAID TO THE GLASS REPAIR SHOP.

Section 5--Section 30-14-222, MEA, is amended to read:

"30-14-222--injunctions-----damages-----production-of

1 evidence; (1) Any A person, if injured thereby by an act, or
 2 the attorney general may maintain an action to enjoin a
 3 continuance of an act in violation of 30-14-205 through
 4 30-14-218 or {sections 1 through 4} and for the recovery of
 5 damages; if in such the action the court finds that the
 6 defendant is violating or has violated any of the provisions
 7 of 30-14-205 through 30-14-218 or {sections 1 through 4}, it
 8 shall enjoin the defendant from a continuance thereof of the
 9 violation; it is not necessary to allege or prove actual
 10 damages to the plaintiff.

11 (2) In addition to such injunctive relief, the
 12 plaintiff is entitled to recover from the defendant three
 13 times the amount of actual damages sustained.

14 (3) A defendant in an action brought under this section
 15 may be required to testify under the Montana Rules of Civil
 16 Procedure; in addition, the books and records of any such
 17 the defendant may be brought into court and introduced into
 18 evidence by reference. No information information so
 19 obtained may not be used against the defendant as a basis
 20 for a misdemeanor prosecution under 30-14-205 through
 21 30-14-218, {sections 1 through 4}, or and 30-14-224."

22 Section 6. Section 30-14-223, MCA, is amended to read:

23 "30-14-223. Department to institute suit. Upon the
 24 third violation of any of the provisions of 30-14-205
 25 through 30-14-218 or {sections 1 through 4} by any a

1 business, the department shall institute proper suits or quo
 2 warranto proceedings in a court of competent jurisdiction
 3 for the forfeiture of its charter, rights, franchises or
 4 privileges, and powers exercised by such the business and to
 5 permanently enjoin it from transacting business in this
 6 state. If in such the action the court finds that the
 7 business is violating or has violated any of the provisions
 8 of 30-14-205 through 30-14-218 or {sections 1 through 4}, it
 9 shall enjoin the business from doing business in this state
 10 permanently or for such a time as the court orders or shall
 11 annul the charter or revoke the franchise of such the
 12 business."

13 Section 7. Section 30-14-224, MCA, is amended to read:

14 "30-14-224. Penalties. (1) Except as otherwise provided
 15 in this section, a person, whether as principal, agent,
 16 officer or director who violates any of the provisions of
 17 30-14-206 through 30-14-218 or {sections 1 through 4} is
 18 guilty of a misdemeanor for each single violation and upon
 19 conviction thereof shall be fined not less than \$100 or more
 20 than \$1,000 or imprisoned for a term not to exceed 6 months,
 21 or both.

22 (2) A violation of 30-14-205 is punishable by
 23 imprisonment in the county jail for a period not less than
 24 24 hours or more than 1 year or by fine not exceeding
 25 \$25,000, or both.

~~{3}~~ When there is a violation of 30-14-2167 in addition to the penalty specified in subsection ~~{1}~~, the court before which a conviction is had shall within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture and that department shall revoke any license issued to the person so convicted. In such case no A new license may not be granted to the person whose license is revoked or to anyone either directly or indirectly engaged with him that person in such that business for a period of 1 year."

NEW SECTION. **SECTION 5.** DESIST ORDERS FOR PROHIBITED PRACTICES. VIOLATIONS OF [SECTIONS 1 THROUGH 4 3] ARE SUBJECT TO CEASE AND DESIST ORDERS OF THE COMMISSIONER ISSUED UNDER 33-18-1004.

NEW SECTION. **Section 6.** Codification instruction. (1) [Sections 1 through 4 3] are intended to be codified as an integral part of Title 30 33, chapter 14 18, part 2, and the provisions of Title 30 33, chapter 14 18, part 2, apply to [sections 1 through 4 3].

(2) [SECTION 4] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 30, CHAPTER 14, PART 2, AND THE PROVISIONS OF TITLE 30, CHAPTER 14, PART 2, APPLY TO [SECTION 4].

~~{2}~~(3) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 33, CHAPTER 18, PART 10, AND THE

PROVISIONS OF TITLE 33, CHAPTER 18, PART 10, APPLY TO [SECTION 5].

NEW SECTION. **SECTION 7.** EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

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