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**TESTIMONY OF ERIC CIOPPA
SUPERINTENDENT OF INSURANCE
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DEPARTMENT OF PROFESSIONAL AND FINANCIAL
REGULATION
In Opposition to L.D. 1540**

**“An Act To Protect Consumers’ Freedom of Choice
in Auto Collision Repairs”**

**Sponsored by Representative Hamann
Before the Joint Standing Committee on Insurance
and Financial Services
May 10, 2017 at 10:00 a.m.**

Senator Whittmore, Representative Lawrence, and members of the Committee, I am Superintendent of Insurance Eric Cioppa. I am here to in opposition to L.D. 1540.

The Maine Insurance Code’s Trade Practices and Frauds chapter prohibits insurers and their agents and employees from requiring, directly or indirectly, that appraisals or repairs for motor vehicle collision damage be or



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not be made at a particular business.¹ This practice is known as steering. The statute also prohibits an insurer from recommending that a claimant use a particular motor vehicle repair service or network of repair services without telling the claimant that he or she has no obligation to use the recommended repair service or network.

Steering is an issue that periodically comes to the Bureau's attention. Since 1990, in response to law changes and inquiries from the public, the Bureau has issued four bulletins concerning glass and collision repair steering.² In 2015 and 2016, in response to concerns raised by a group of body shops, the Bureau investigated the steering practices of the seven largest (by premium volume) motor vehicle insurer groups in Maine. In response to the Bureau's requests, these groups submitted copies of training materials, scripts, and supporting materials concerning appraisals or repairs involving collision repairs, information about any complaints that alleged improper direction to direct repair programs, and descriptions of how their direct repair program and non-direct program payment processes differ. Our investigation did not find evidence of violations of Section 2164-C.

¹ 24-A M.R.S. § 2164-C. The statute also applies to motor vehicle glass damage appraisal and repair.

² Bulletin 387, issued August 15, 2013 is the most current and is at <http://www.state.me.us/pfr/insurance/legal/bulletins/pdf/387.pdf>. Prior bulletins were Bulletin 171 (September 19, 1990), Bulletin 284 (October 14, 1998), and Bulletin 336 (August 22, 2005), which replaced Bulletins 171 and 284.

This conclusion highlights an important point. Bureau staff have discussed steering issues with various interested parties, including insurers, independent body shops, and legislators. We have had few consumer complaints on this issue. Since 2008, the Bureau has received, to the best of our knowledge, only six consumer complaints related to collision repair steering, and the issue in two of them was that the insurers did *not* tell the complainants about their networks of repair shops.

The law does not prohibit insurers from setting up repair shop networks. The Bureau regulates insurers for solvency and consumer protection and, to the extent that insurers make promises to claimants who go through their networks, the Bureau can require insurers to honor those promises. Those promises may include incentives such as guaranteeing the repair for as long as the consumer owns the car, which we would enforce even if the body shop were to go out of business.

I have several concerns about L.D. 1540:

- The bill says that a consumer benefit in a preferred vendor program is not an incentive but may not be presented as an incentive. The purpose of this provision is unclear.
- The requirement that an insurer give the Superintendent any recording concerning a claim is not necessary because the

Insurance Code already requires insurers to respond to the Superintendent's inquiries.³ Likewise, once a complaint is resolved, the Bureau already informs the consumer of the outcome.⁴ The requirement that the Superintendent must provide the complainant with a copy of any recording furnished in response to a complaint is problematic because the Insurance Code makes all records of investigations confidential.⁵ This includes providing documents or other information obtained during an investigation to complainants or other parties involved in the complaint. This promotes confidence in our complaint investigations and prevents the Bureau from being used in civil actions to circumvent the discovery rules.

- The provisions making violation of Section 2164-C a violation of the Maine Unfair Trade Practices Act,⁶ imposing a series of increasing civil penalties for violations, and requiring an insurer to prove to the Superintendent that it has taken action to prevent further violations are not necessary for several reasons. The

³ 24-A M.R.S. § 220(2).

⁴ The bill uses the phrase "superintendent's decision," but only a small proportion of consumer complaints result in any formal adjudicatory "decision."

⁵ 24-A M.R.S. § 216(2).

⁶ 24-A M.R.S. §§ 12-A(1) & (1-A).

Attorney General already has the authority to pursue actions in Superior Court for violations of the Insurance Code,⁷ and the Superintendent already has extensive authority under the Insurance Code to impose civil penalties and other remedies, including limiting or revoking an insurer's certificate of authority.⁸

- The set penalties for first and subsequent offenses would have the unintended consequence of actually limiting the Superintendent's ability to sanction insurers. In general, the Superintendent has the full range of sanctions available for violations of the insurance code whether they are a first or subsequent offense. The set penalties in the bill would require proof of four or more subsequent offenses within one 12-month period before the Superintendent would have the full range of penalties available as sanctions.

Thank you. I would be glad to answer any questions now or at the work session.

⁷ 24-A M.R.S. §§ 12-A(5); 417(1) & 2)..

⁸ 24-A M.R.S. § 12-A and § 417.