

AN ACT

relating to insurer interests in certain motor vehicle repair facilities; providing a civil penalty.

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

SECTION 1. Subtitle A, Title 14, Occupations Code, is amended by adding Chapter 2306 to read as follows:

CHAPTER 2306. INSURER INTERESTS IN REPAIR FACILITIES

Sec. 2306.001. DEFINITIONS. In this chapter:

(1) "Arm's length transaction" means the standard of conduct under which two parties having substantially equal bargaining power, each acting in its own interest, would negotiate or carry out a particular transaction.

(2) "Claims center" means a location designated by an insurer where a claims adjuster, employee, or agent of the insurer performs an initial damage estimate on a vehicle under the terms of an insurance policy.

(3) "Favored facility agreement" means an agreement between an insurer and a repair facility under which the insurer agrees to recommend, directly or indirectly, to its policyholders or other beneficiaries under the insurer's policies, that the policyholder or other beneficiary obtain repairs at that repair facility or in any other way agrees to influence its policyholders or other beneficiaries under the insurer's policies to obtain repairs at that repair facility.

1           (4) "Insurer" means an insurer authorized by the Texas  
2 Department of Insurance to write motor vehicle insurance in this  
3 state, including a county mutual insurance company, a Lloyd's plan,  
4 and a reciprocal or interinsurance exchange. The term includes an  
5 entity that is an affiliate of an insurer as described by Section  
6 823.003, Insurance Code.

7           (5) "Repair facility" has the meaning assigned by  
8 Section 2304.001.

9           (6) "Support services" means basic services, provided  
10 nonspecifically, that are provided internally and to each affiliate  
11 or subsidiary, by an insurer, its parent company, or a separate  
12 affiliate created to provide basic corporate support. The term does  
13 not include a service related to the operation of a repair facility  
14 if that service would have no value, or minimal value to any other  
15 type of business.

16           (7) "Tied repair facility" means a repair facility in  
17 which an insurer owns an interest.

18           Sec. 2306.002. INSURER INTERESTS. (a) Except as provided  
19 by this section, an insurer may not own or acquire an interest in a  
20 repair facility.

21           (b) An insurer that owns an interest in a tied repair  
22 facility that was open for business, or on which construction had  
23 commenced, on April 15, 2003, may maintain that ownership interest  
24 and may operate that facility.

25           (c) An insurer may relocate a tied repair facility described  
26 by Subsection (b), but may not obtain an ownership interest in any  
27 additional facility not described by Subsection (b).

1       (d) Subsections (b) and (c) are applicable to an insurer  
2 only if the insurer and its tied repair facility are otherwise in  
3 compliance with this chapter.

4       Sec. 2306.003. FAVORED FACILITY AGREEMENT PRESUMED. An  
5 insurer is presumed to have a favored facility agreement with a  
6 repair facility in which it owns an interest.

7       Sec. 2306.004. CONTRACTUAL CONDITIONS. (a) An insurer  
8 that owns an interest in a repair facility may use only one favored  
9 facility agreement.

10       (b) Except as otherwise provided by this subsection, the  
11 terms under which the insurer enters into a favored facility  
12 agreement must be identical for all repair facilities, including a  
13 tied repair facility. An insurer may vary the terms as necessary to  
14 implement technical differences required by geographical factors  
15 or other legitimate business factors.

16       (c) Except as provided by Subsection (d), an insurer may not  
17 cancel a favored facility agreement until the expiration of the  
18 30th day after the date on which the insurer provides notice to the  
19 repair facility of the insurer's intent to cancel the agreement.  
20 The insurer shall include with the notice a statement explaining  
21 the reason for the cancellation of the agreement.

22       (d) An insurer may summarily cancel a favored facility  
23 agreement with a repair facility if the insurer, a policyholder of  
24 the insurer, or another beneficiary under the insurer's policy  
25 establishes reasonable grounds to believe that the repair facility  
26 is fraudulent in its dealings with the insurer or the policyholder  
27 or other beneficiaries under the insurer's policy.

1       Sec. 2306.005. NOTICE. (a) An insurer that owns an interest  
2 in a repair facility shall post the following notice in each of its  
3 tied repair facilities:

4       "THIS REPAIR FACILITY IS OWNED IN WHOLE OR IN PART BY (NAME OF  
5 INSURER). YOU ARE HEREBY NOTIFIED THAT YOU ARE ENTITLED TO SEEK  
6 REPAIRS AT ANY REPAIR FACILITY OF YOUR CHOICE."

7       (b) The notice required by Subsection (a) must be posted  
8 prominently in a location in which it is likely to be seen and read  
9 by a customer of the repair facility.

10       Sec. 2306.006. PROHIBITIONS. An insurer may not:

11       (1) condition the provision of a product, service,  
12 insurance policy renewal, pricing, or other benefit on the purchase  
13 of any good or service from its tied repair facilities;

14       (2) share information with its tied repair facilities  
15 that is not made available on identical terms and conditions to  
16 other repair facilities with which the insurer has entered into a  
17 favorable facility agreement;

18       (3) engage in a joint marketing program with its tied  
19 repair facilities;

20       (4) provide its tied repair facilities a  
21 recommendation, referral, description, advantage, or access to its  
22 policyholders or other beneficiaries under its insurance policies  
23 that is not provided on identical terms to other repair facilities  
24 with which the insurer has entered into a favorable facility  
25 agreement;

26       (5) provide a tied repair facility access to the  
27 insurer's products or services on terms and conditions different

1 from those under which the insurer provides access to the same  
2 products or services to another repair facility with which the  
3 insurer has entered into a favored facility agreement;

4 (6) allow a tied repair facility to use the insurer's  
5 name, trademark, tradename, brand, or logo in a manner different  
6 than that allowed for any other favored facility;

7 (7) subsidize the business activities or operating  
8 expenses of a tied repair facility;

9 (8) directly or indirectly require a policyholder of  
10 the insurer or other beneficiary under the insurer's policy to  
11 obtain a damage estimate on a vehicle covered by the insurance  
12 policy at a tied repair facility;

13 (9) authorize or allow a person representing the  
14 insurer, whether an employee or an independent contractor, to  
15 recommend to a policyholder or other beneficiary under the  
16 insurance policy that the policyholder or other beneficiary obtain  
17 repairs at a tied repair facility, except to the same extent that  
18 the person recommends other repair facilities with whom the insurer  
19 has entered into a favored facility agreement;

20 (10) require a policyholder or beneficiary to use a  
21 claims center located on the premises of a tied repair facility;

22 (11) enter into a favored facility agreement  
23 exclusively with its tied repair facilities;

24 (12) retaliate or discriminate against a person who:

25 (A) files an action as provided by this chapter;

26 or

27 (B) assists or participates in any manner in an

1 investigation, judicial proceeding, or other action brought or  
2 maintained as provided by this chapter; or

3 (13) include earnings or losses of a tied repair  
4 facility in a rate filing made under Chapter 5, Insurance Code.

5 Sec. 2306.007. CONFLICT OF INTEREST PROHIBITED. Except as  
6 otherwise provided by this chapter, an agreement between an insurer  
7 and its tied repair facility must be negotiated and executed as an  
8 arm's length transaction.

9 Sec. 2306.008. SUPPORT SERVICES. (a) Notwithstanding this  
10 chapter, and except as provided by Subsection (b), an insurer may  
11 provide support services to its tied repair facilities if those  
12 services:

13 (1) are priced at a level that is fair and reasonable  
14 to both the insurer and the tied repair facility; and

15 (2) do not directly or indirectly confer a competitive  
16 advantage to the tied repair facility.

17 (b) Notwithstanding Subsection (a), an agreement by an  
18 insurer to provide support services to its tied repair facility may  
19 not create the potential for confusion among the policyholders of  
20 the insurer, other beneficiaries of an insurance policy issued by  
21 the insurer, or other parties.

22 Sec. 2306.009. ACTION TO COMPEL COMPLIANCE; DISCIPLINARY  
23 ACTION. (a) A person, including a repair facility, aggrieved by a  
24 violation of this chapter by an insurer may bring an action for  
25 injunctive or other appropriate relief to compel the insurer to  
26 comply with this chapter.

27 (b) In an action brought under this section, in addition to

1 other appropriate relief, the court may impose a civil penalty as  
2 provided by this section.

3 (c) A civil penalty imposed under this section may not be  
4 less than \$1,000 or more than \$5,000 per violation. Each day during  
5 which a violation occurs is a separate violation.

6 (d) The amount of a civil penalty under this section is  
7 based on the seriousness of the violation, and must reflect the  
8 following factors:

9 (1) the nature, circumstances, extent, and gravity of  
10 the act or omission that constitutes the violation;

11 (2) the economic harm caused by the violation;

12 (3) the history of previous violations;

13 (4) the need to deter future violations by the person  
14 charged with a violation;

15 (5) efforts, if any, made to correct the violation;

16 and

17 (6) any other factors the court considers appropriate  
18 to implement the remedial intent of this chapter.

19 (e) A civil penalty collected under this section shall be  
20 sent to the comptroller for deposit in the general revenue fund.

21 (f) A plaintiff who prevails in an action under this section  
22 is entitled to recover reasonable attorney's fees and court costs.

23 (g) If a court finds that an action brought under this  
24 section was groundless, brought in bad faith, or brought for the  
25 purpose of harassment, the court may award reasonable attorney's  
26 fees to the prevailing defendant.

27 Sec. 2306.010. ANTITRUST ENFORCEMENT. This chapter does

1 not confer immunity from an antitrust law of this state or the  
2 United States. A sanction or penalty imposed in an action brought  
3 under this chapter is in addition to other relief granted on the  
4 basis of the violation of an antitrust law of this state or the  
5 United States.

6 Sec. 2306.011. EXCLUSIVITY. Unless otherwise specifically  
7 provided by this chapter, this chapter provides the exclusive  
8 authority and rules applicable to the regulation of the relations  
9 between an insurer and a tied repair facility.

10 SECTION 2. This Act takes effect September 1, 2003.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1131 was passed by the House on April 9, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1131 on May 29, 2003, by a non-record vote.

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Chief Clerk of the House

I certify that H.B. No. 1131 was passed by the Senate, with amendments, on May 27, 2003, by a viva-voce vote.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor