

1-1 By: Flores, et al. (Senate Sponsor - Carona) H.B. No. 1131  
1-2 (In the Senate - Received from the House April 10, 2003;  
1-3 April 14, 2003, read first time and referred to Committee on  
1-4 Business and Commerce; May 24, 2003, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 9, Nays  
1-6 0; May 24, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1131 By: Armbrister

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to insurer interests in certain motor vehicle repair  
1-11 facilities; providing a civil penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle A, Title 14, Occupations Code, is  
1-14 amended by adding Chapter 2306 to read as follows:

1-15 CHAPTER 2306. INSURER INTERESTS IN REPAIR FACILITIES

1-16 Sec. 2306.001. DEFINITIONS. In this chapter:

1-17 (1) "Arm's length transaction" means the standard of  
1-18 conduct under which two parties having substantially equal  
1-19 bargaining power, each acting in its own interest, would negotiate  
1-20 or carry out a particular transaction.

1-21 (2) "Claims center" means a location designated by an  
1-22 insurer where a claims adjuster, employee, or agent of the insurer  
1-23 performs an initial damage estimate on a vehicle under the terms of  
1-24 an insurance policy.

1-25 (3) "Favored facility agreement" means an agreement  
1-26 between an insurer and a repair facility under which the insurer  
1-27 agrees to recommend, directly or indirectly, to its policyholders  
1-28 or other beneficiaries under the insurer's policies, that the  
1-29 policyholder or other beneficiary obtain repairs at that repair  
1-30 facility or in any other way agrees to influence its policyholders  
1-31 or other beneficiaries under the insurer's policies to obtain  
1-32 repairs at that repair facility.

1-33 (4) "Insurer" means an insurer authorized by the Texas  
1-34 Department of Insurance to write motor vehicle insurance in this  
1-35 state, including a county mutual insurance company, a Lloyd's plan,  
1-36 and a reciprocal or interinsurance exchange. The term includes an  
1-37 entity that is an affiliate of an insurer as described by Section  
1-38 823.003, Insurance Code.

1-39 (5) "Repair facility" has the meaning assigned by  
1-40 Section 2304.001.

1-41 (6) "Support services" means basic services, provided  
1-42 nonspecifically, that are provided internally and to each affiliate  
1-43 or subsidiary, by an insurer, its parent company, or a separate  
1-44 affiliate created to provide basic corporate support. The term does  
1-45 not include a service related to the operation of a repair facility  
1-46 if that service would have no value, or minimal value to any other  
1-47 type of business.

1-48 (7) "Tied repair facility" means a repair facility in  
1-49 which an insurer owns an interest.

1-50 Sec. 2306.002. INSURER INTERESTS. (a) Except as provided  
1-51 by this section, an insurer may not own or acquire an interest in a  
1-52 repair facility.

1-53 (b) An insurer that owns an interest in a tied repair  
1-54 facility that was open for business, or on which construction had  
1-55 commenced, on April 15, 2003, may maintain that ownership interest  
1-56 and may operate that facility.

1-57 (c) An insurer may relocate a tied repair facility described  
1-58 by Subsection (b), but may not obtain an ownership interest in any  
1-59 additional facility not described by Subsection (b).

1-60 (d) Subsections (b) and (c) are applicable to an insurer  
1-61 only if the insurer and its tied repair facility are otherwise in  
1-62 compliance with this chapter.

1-63 Sec. 2306.003. FAVORED FACILITY AGREEMENT PRESUMED. An

2-1 insurer is presumed to have a favored facility agreement with a  
 2-2 repair facility in which it owns an interest.

2-3 Sec. 2306.004. CONTRACTUAL CONDITIONS. (a) An insurer  
 2-4 that owns an interest in a repair facility may use only one favored  
 2-5 facility agreement.

2-6 (b) Except as otherwise provided by this subsection, the  
 2-7 terms under which the insurer enters into a favored facility  
 2-8 agreement must be identical for all repair facilities, including a  
 2-9 tied repair facility. An insurer may vary the terms as necessary to  
 2-10 implement technical differences required by geographical factors  
 2-11 or other legitimate business factors.

2-12 (c) Except as provided by Subsection (d), an insurer may not  
 2-13 cancel a favored facility agreement until the expiration of the  
 2-14 30th day after the date on which the insurer provides notice to the  
 2-15 repair facility of the insurer's intent to cancel the agreement.  
 2-16 The insurer shall include with the notice a statement offering the  
 2-17 repair facility a reasonable opportunity to cure the alleged  
 2-18 failure to meet the requirements of the favored facility agreement.

2-19 (d) An insurer may summarily cancel a favored facility  
 2-20 agreement with a repair facility if the insurer, a policyholder of  
 2-21 the insurer, or another beneficiary under the insurer's policy  
 2-22 establishes reasonable grounds to believe that the repair facility  
 2-23 is guilty of fraudulent conduct in its dealings with the insurer.

2-24 Sec. 2306.005. NOTICE. (a) An insurer that owns an interest  
 2-25 in a repair facility shall post the following notice in each of its  
 2-26 tied repair facilities:

2-27 "THIS REPAIR FACILITY IS OWNED IN WHOLE OR IN PART BY (NAME OF  
 2-28 INSURER). YOU ARE HEREBY NOTIFIED THAT YOU ARE ENTITLED TO SEEK  
 2-29 REPAIRS AT ANY REPAIR FACILITY OF YOUR CHOICE."

2-30 (b) The notice required by Subsection (a) must be posted  
 2-31 prominently in a location in which it is likely to be seen and read  
 2-32 by a customer of the repair facility.

2-33 Sec. 2306.006. PROHIBITIONS. An insurer may not:

2-34 (1) condition the provision of a product, service,  
 2-35 insurance policy renewal, pricing, or other benefit on the purchase  
 2-36 of any good or service from its tied repair facilities;

2-37 (2) share information with its tied repair facilities  
 2-38 that is not made available on identical terms and conditions to  
 2-39 other repair facilities with which the insurer has entered into a  
 2-40 favored facility agreement;

2-41 (3) engage in a joint marketing program with its tied  
 2-42 repair facilities;

2-43 (4) provide its tied repair facilities a  
 2-44 recommendation, referral, description, advantage, or access to its  
 2-45 policyholders or other beneficiaries under its insurance policies  
 2-46 that is not provided on identical terms to other repair facilities  
 2-47 with which the insurer has entered into a favored facility  
 2-48 agreement;

2-49 (5) provide a tied repair facility access to the  
 2-50 insurer's products or services on terms and conditions different  
 2-51 from those under which the insurer provides access to the same  
 2-52 products or services to another repair facility with which the  
 2-53 insurer has entered into a favored facility agreement;

2-54 (6) allow a tied repair facility to use the insurer's  
 2-55 name, trademark, tradename, brand, or logo;

2-56 (7) subsidize the business activities or operating  
 2-57 expenses of a tied repair facility;

2-58 (8) directly or indirectly require a policyholder of  
 2-59 the insurer or other beneficiary under the insurer's policy to  
 2-60 obtain a damage estimate on a vehicle covered by the insurance  
 2-61 policy at a tied repair facility;

2-62 (9) authorize or allow a person representing the  
 2-63 insurer, whether an employee or an independent contractor, to  
 2-64 recommend to a policyholder or other beneficiary under the  
 2-65 insurance policy that the policyholder or other beneficiary obtain  
 2-66 repairs at a tied repair facility, except to the same extent that  
 2-67 the person recommends other repair facilities with whom the insurer  
 2-68 has entered into a favored facility agreement;

2-69 (10) locate a temporary or permanent claims center on

3-1 the premises of a tied repair facility, except for a period not to  
3-2 exceed 30 days immediately following a weather-related catastrophe  
3-3 or a major natural disaster, as declared by the commissioner of  
3-4 insurance in the manner provided by law;

3-5 (11) enter into a favored facility agreement  
3-6 exclusively with its tied repair facilities;

3-7 (12) retaliate or discriminate against a person who:  
3-8 (A) files an action as provided by this chapter;

3-9 or

3-10 (B) assists or participates in any manner in an  
3-11 investigation, judicial proceeding, or other action brought or  
3-12 maintained as provided by this chapter; or

3-13 (13) include earnings or losses of a tied repair  
3-14 facility in a rate filing made under Chapter 5, Insurance Code.

3-15 Sec. 2306.007. CONFLICT OF INTEREST PROHIBITED. Except as  
3-16 otherwise provided by this chapter, an agreement between an insurer  
3-17 and its tied repair facility must be negotiated and executed as an  
3-18 arm's length transaction.

3-19 Sec. 2306.008. SUPPORT SERVICES. (a) Notwithstanding this  
3-20 chapter, and except as provided by Subsection (b), an insurer may  
3-21 provide support services to its tied repair facilities if those  
3-22 services:

3-23 (1) are priced at a level that is fair and reasonable  
3-24 to both the insurer and the tied repair facility; and

3-25 (2) do not directly or indirectly confer a competitive  
3-26 advantage to the tied repair facility.

3-27 (b) Notwithstanding Subsection (a), an agreement by an  
3-28 insurer to provide support services to its tied repair facility may  
3-29 not create the potential for confusion among the policyholders of  
3-30 the insurer, other beneficiaries of an insurance policy issued by  
3-31 the insurer, or other parties.

3-32 Sec. 2306.009. ACTION TO COMPEL COMPLIANCE; DISCIPLINARY  
3-33 ACTION. (a) A person, including a repair facility, aggrieved by a  
3-34 violation of this chapter by an insurer may bring an action for  
3-35 injunctive or other appropriate relief to compel the insurer to  
3-36 comply with this chapter.

3-37 (b) In an action brought under this section, in addition to  
3-38 other appropriate relief, the court may impose a civil penalty as  
3-39 provided by this section.

3-40 (c) A civil penalty imposed under this section may not be  
3-41 less than \$1,000 or more than \$5,000 per violation. Each day during  
3-42 which a violation occurs is a separate violation.

3-43 (d) The amount of a civil penalty under this section is  
3-44 based on the seriousness of the violation, and must reflect the  
3-45 following factors:

3-46 (1) the nature, circumstances, extent, and gravity of  
3-47 the act or omission that constitutes the violation;

3-48 (2) the economic harm caused by the violation;

3-49 (3) the history of previous violations;

3-50 (4) the need to deter future violations by the person  
3-51 charged with a violation;

3-52 (5) efforts, if any, made to correct the violation;  
3-53 and

3-54 (6) any other factors the court considers appropriate  
3-55 to implement the remedial intent of this chapter.

3-56 (e) A civil penalty collected under this section shall be  
3-57 sent to the comptroller for deposit in the general revenue fund.

3-58 (f) A plaintiff who prevails in an action under this section  
3-59 is entitled to recover reasonable attorney's fees and court costs.

3-60 (g) If a court finds that an action brought under this  
3-61 section was groundless, brought in bad faith, or brought for the  
3-62 purpose of harassment, the court may award reasonable attorney's  
3-63 fees to the prevailing defendant.

3-64 Sec. 2306.010. ANTITRUST ENFORCEMENT. This chapter does  
3-65 not confer immunity from an antitrust law of this state or the  
3-66 United States. A sanction or penalty imposed in an action brought  
3-67 under this chapter is in addition to other relief granted on the  
3-68 basis of the violation of an antitrust law of this state or the  
3-69 United States.

4-1 Sec. 2306.011. EXCLUSIVITY. Unless otherwise specifically  
4-2 provided by this chapter, this chapter provides the exclusive  
4-3 authority and rules applicable to the regulation of the relations  
4-4 between an insurer and a tied repair facility.

4-5 SECTION 2. This Act takes effect September 1, 2003.

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