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A bill to be entitled
 An act relating to insurer interests in certain motor
 vehicle repair shops; amending s. 559.901, F.S.; providing
 a popular name; amending s. 559.903, F.S.; providing
 definitions; amending s. 559.921, F.S.; providing a civil
 penalty; providing for an administrative fine for certain
 violations; creating s. 559.9222, F.S.; prohibiting
 insurer interests in certain motor vehicle repair shops;
 creating s. 559.9223, F.S.; providing for a favored
 facility agreement presumption; creating s. 559.9224,
 F.S.; providing conditions for contracts between insurers
 and certain motor vehicle repairs shops; creating s.
 559.9225, F.S.; providing notice requirements for certain
 motor vehicle repair shops; creating s. 559.9226, F.S.;
 specifying prohibited acts; creating s. 559.9227, F.S.;
 requiring certain agreements to be negotiated and executed
 to prevent conflicts of interest; creating s. 559.9228,
 F.S.; authorizing insurers to provide certain support
 services to certain repair shops under certain
 circumstances; creating s. 559.9229, F.S.; providing
 certain sections do not confer immunity from certain
 antitrust laws; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.901, Florida Statutes, is amended
 to read:

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28 559.901 Short title.--Sections 559.901-559.9229 ~~559.901-~~
 29 ~~559.9221 shall be known and~~ may be referred to by the popular
 30 name cited as the "Florida Motor Vehicle Repair Act."

31 Section 2. Section 559.903, Florida Statutes, is amended
 32 to read:

33 559.903 Definitions.--As used in this act:

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

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

42 (3)~~(1)~~ "Customer" means the person who signs the written
 43 repair estimate or any other person whom the person who signs
 44 the written repair estimate designates on the written repair
 45 estimate as a person who may authorize repair work.

46 (4)~~(2)~~ "Department" means the Department of Agriculture
 47 and Consumer Services.

48 (5)~~(3)~~ "Employee" means an individual who is employed full
 49 time or part time by a motor vehicle repair shop and performs
 50 motor vehicle repair.

51 (6) "Favored facility agreement" means an agreement
 52 between an insurer and a motor vehicle repair shop under which
 53 the insurer agrees to recommend, directly or indirectly, to its
 54 policyholders or other beneficiaries under the insurer's
 55 policies, that the policyholder or other beneficiary obtain
 56 repairs at that motor vehicle repair shop or in any other way

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57 agrees to influence its policyholders or other beneficiaries
 58 under the insurer's policies to obtain repairs at that motor
 59 vehicle repair shop.

60 ~~(7)(4)~~ "Final estimate" means the last estimate approved
 61 by the customer either in writing or orally, as evidenced by the
 62 written repair estimate.

63 (8) "Insurer" means any person authorized under the
 64 Florida Insurance Code to transact insurance in this state.

65 ~~(9)(5)~~ "Motor vehicle" means any automobile, truck, bus,
 66 recreational vehicle, motorcycle, motor scooter, or other motor
 67 powered vehicle, but does not include trailers, mobile homes,
 68 travel trailers, trailer coaches without independent motive
 69 power, watercraft or aircraft, or special mobile equipment as
 70 defined in s. 316.003(48).

71 ~~(10)(8)~~ "Motor vehicle repair" means all maintenance of
 72 and modifications and repairs to motor vehicles, and diagnostic
 73 work incident thereto, including, but not limited to, the
 74 rebuilding or restoring of rebuilt vehicles, body work,
 75 painting, warranty work, and other work customarily undertaken
 76 by motor vehicle repair shops.

77 ~~(11)(6)~~ "Motor vehicle repair shop" means any person who,
 78 for compensation, engages or attempts to engage in the repair of
 79 motor vehicles owned by other persons and includes, but is not
 80 limited to: mobile motor vehicle repair shops, motor vehicle and
 81 recreational vehicle dealers; garages; service stations; self-
 82 employed individuals; truck stops; paint and body shops; brake,
 83 muffler, or transmission shops; and shops doing glass work. Any
 84 person who engages solely in the maintenance or repair of the
 85 coach portion of a recreational vehicle is not a motor vehicle

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86 repair shop.

87 ~~(12)(7)~~ "Place of business" means a physical place where
 88 the business of motor vehicle repair is conducted, including any
 89 vehicle constituting a mobile motor vehicle repair shop from
 90 which the business of motor vehicle repair is conducted.

91 (13) "Support services" means basic services, provided
 92 nonspecifically, that are provided internally and to each
 93 affiliate or subsidiary by an insurer, its parent company, or a
 94 separate affiliate created to provide basic corporate support.
 95 The term does not include a service related to the operation of
 96 a motor vehicle repair shop if that service would have no value
 97 or minimal value to any other type of business.

98 (14) "Tied motor vehicle repair shop" means a motor
 99 vehicle repair shop in which an insurer owns an interest.

100 Section 3. Subsections (4), (5), and (7) of section
 101 559.921, Florida Statutes, are amended to read:

102 559.921 Remedies.--

103 (4)(a) The department may enter an order imposing one or
 104 more of the penalties set forth in paragraph (b) if the
 105 department finds that a motor vehicle repair shop:

106 1. Violated or is operating in violation of any of the
 107 provisions of this part or of the rules adopted or orders issued
 108 thereunder;

109 2. Made a material false statement in any application,
 110 document, or record required to be submitted or retained under
 111 this part;

112 3. Refused or failed, or any of its principal officers
 113 have refused or failed, after notice, to produce any document or
 114 record or disclose any information required to be produced or

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115 disclosed under this part or the rules of the department;

116 4. Made a material false statement in response to any
 117 request or investigation by the department, the Department of
 118 Legal Affairs, or the state attorney; or

119 5. Has intentionally defrauded the public through
 120 dishonest or deceptive means.

121 (b) Upon a finding as set forth in paragraph (a), the
 122 department may enter an order doing one or more of the
 123 following:

124 1. Issuing a notice of noncompliance pursuant to s.
 125 120.695.

126 2. Imposing an administrative fine not to exceed \$1,000
 127 per violation for each act which constitutes a violation of ss.
 128 559.901-559.9221 ~~this part~~ or a rule or order.

129 3. Imposing an administrative fine of not less than \$1,000
 130 nor more than \$5,000 for each act which constitutes a violation
 131 of ss. 559.9222-559.9229. Each day during which a violation of
 132 ss. 559.9222-559.9229 occurs constitutes a separate violation.
 133 The amount of the administrative fine shall be based on the
 134 seriousness of the violation and must reflect the following
 135 factors:

136 a. The nature, circumstances, extent, and gravity of the
 137 act or omission that constitutes the violation.

138 b. The economic harm caused by the violation.

139 c. The history of previous violations.

140 d. The need to deter future violations by the person
 141 charged with a violation.

142 e. Efforts, if any, made to correct the violation.

143 f. Any other factors the court considers appropriate to

144 implement the remedial intent of this chapter.

145 ~~4.3.~~ Directing that the motor vehicle repair shop cease
146 and desist specified activities.

147 ~~5.4.~~ Refusing to register or revoking or suspending a
148 registration.

149 ~~6.5.~~ Placing the registrant on probation for a period of
150 time, subject to such conditions as the department may specify.

151 (c) The administrative proceedings which could result in
152 the entry of an order imposing any of the penalties specified in
153 paragraph (b) shall be conducted in accordance with chapter 120.

154 (5)(a) The department or the state attorney, if a
155 violation of this part occurs in his or her judicial circuit,
156 shall be the enforcing authority for purposes of this part and
157 may bring a civil action in circuit court for temporary or
158 permanent injunctive relief and may seek other appropriate civil
159 relief, including a civil penalty not to exceed \$1,000 for each
160 violation of ss. 559.904-559.921 and a civil penalty of not less
161 than \$1,000 and not more than \$5,000 for a violation of ss.

162 559.9222-559.9229, restitution and damages for injured
163 customers, court costs, and reasonable attorney's fees.

164 (b) The enforcing authority may terminate any
165 investigation or action upon agreement by the offender to pay a
166 stipulated civil penalty, to make restitution or pay damages to
167 customers, or to satisfy any other relief authorized herein and
168 requested by the department.

169 (7) If, in any proceeding brought pursuant to ss. 559.904-
170 559.921 ~~this part~~, it is determined that the repairs and costs
171 thereof were in fact authorized, orally or in writing, the
172 repairs were completed in a proper manner, and the consumer

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173 benefited therefrom, then the enforcing authority may consider
 174 such factors in assessing penalties or damages and may award the
 175 reasonable value of such repairs.

176 Section 4. Section 559.9222, Florida Statutes, is created
 177 to read:

178 559.9222 Insurer interests; exclusivity.--

179 (1) Except as provided by this section, an insurer may not
 180 own or acquire an interest in a motor vehicle repair shop.

181 (2) An insurer that owns an interest in a tied motor
 182 vehicle repair shop that was open for business, or on which
 183 construction had commenced, on January 1, 2004, may maintain
 184 that ownership interest and may operate that facility.

185 (3) An insurer may relocate a tied motor vehicle repair
 186 shop described by subsection (2) but may not obtain an ownership
 187 interest in any additional facility not described by that
 188 subsection.

189 (4) Subsections (2) and (3) apply to an insurer only if
 190 the insurer and its tied motor vehicle repair shop are in
 191 compliance with ss. 559.9222-559.9229.

192 (5) Unless otherwise specifically provided, this part
 193 provides the exclusive authority and rules applicable to the
 194 regulation of the relations between an insurer and a tied motor
 195 vehicle repair shop.

196 Section 5. Section 559.9223, Florida Statutes, is created
 197 to read:

198 559.9223 Favored facility agreement presumed.--An insurer
 199 is presumed to have a favored facility agreement with a motor
 200 vehicle repair shop in which it owns an interest.

201 Section 6. Section 559.9224, Florida Statutes, is created

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202 to read:

203 559.9224 Contractual conditions.--

204 (1) An insurer that owns an interest in a motor vehicle
 205 repair shop may be a party to only one favored facility
 206 agreement.

207 (2) The terms under which the insurer enters into a
 208 favored facility agreement must be identical for all motor
 209 vehicle repair shops, including tied motor vehicle repair shops.
 210 However, an insurer may, as necessary, vary the terms to
 211 implement technical differences required by geographical factors
 212 or other legitimate business factors.

213 (3) Except as provided by subsection (4), an insurer may
 214 not cancel a favored facility agreement until the expiration of
 215 the 30th day after the date on which the insurer provides notice
 216 to the motor vehicle repair shop of the insurer's intent to
 217 cancel the agreement. The insurer shall include with the notice
 218 a statement explaining the reason for the cancellation of the
 219 agreement.

220 (4) An insurer may summarily cancel a favored facility
 221 agreement with a motor vehicle repair shop if the insurer, a
 222 policyholder of the insurer, or another beneficiary under the
 223 insurer's policy establishes reasonable grounds to believe that
 224 the motor vehicle repair shop is fraudulent in its dealings with
 225 the insurer or the policyholder or other beneficiaries under the
 226 insurer's policy.

227 Section 7. Section 559.9225, Florida Statutes, is created
 228 to read:

229 559.9225 Notice.--

230 (1) An insurer that owns an interest in a motor vehicle

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231 repair shop shall post the following notice in each of its tied
 232 motor vehicle repair shops:

233
 234 "THIS MOTOR VEHICLE REPAIR SHOP IS OWNED IN WHOLE OR IN PART BY
 235 (insert name of insurer here). YOU ARE HEREBY NOTIFIED THAT YOU
 236 ARE ENTITLED TO SEEK REPAIRS AT ANY MOTOR VEHICLE REPAIR SHOP OF
 237 YOUR CHOICE."

238
 239 (2) The notice required by subsection (1) must be posted
 240 prominently in a location in which it is likely to be seen and
 241 read by a customer of the motor vehicle repair shop.

242 Section 8. Section 559.9226, Florida Statutes, is created
 243 to read:

244 559.9226 Prohibited acts.--An insurer may not:

245 (1) Condition the provision of a product, service,
 246 insurance policy renewal, pricing, or other benefit on the
 247 purchase of any good or service from its tied motor vehicle
 248 repair shops.

249 (2) Share information with its tied motor vehicle repair
 250 shops that is not made available on identical terms and
 251 conditions to other motor vehicle repair shops with which the
 252 insurer has entered into a favored facility agreement;

253 (3) Engage in a joint marketing program with its tied
 254 motor vehicle repair shops.

255 (4) Provide its tied motor vehicle repair shops with a
 256 recommendation, referral, description, advantage, or access to
 257 its policyholders or other beneficiaries under its insurance
 258 policies that is not provided on identical terms to other motor
 259 vehicle repair shops with which the insurer has entered into a

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260 avored facility agreement.

261 (5) Provide a tied motor vehicle repair shop access to the
 262 insurer's products or services on terms and conditions different
 263 from those under which the insurer provides access to the same
 264 products or services to another motor vehicle repair shop with
 265 which the insurer has entered into a favored facility agreement.

266 (6) Allow a tied motor vehicle repair shop to use the
 267 insurer's name, trademark, trade name, brand, or logo in a
 268 manner different than that allowed for any other favored
 269 facility.

270 (7) Subsidize the business activities or operating
 271 expenses of a tied motor vehicle repair shop.

272 (8) Directly or indirectly require a policyholder of the
 273 insurer or other beneficiary under the insurer's policy to
 274 obtain a damage estimate on a vehicle covered by the insurance
 275 policy at a tied motor vehicle repair shop.

276 (9) Authorize or allow a person representing the insurer,
 277 whether an employee or an independent contractor, to recommend
 278 to a policyholder or other beneficiary under the insurance
 279 policy that the policyholder or other beneficiary obtain motor
 280 vehicle repair at a tied motor vehicle repair shop, except to
 281 the same extent that the person recommends other motor vehicle
 282 repair shops with whom the insurer has entered into a favored
 283 facility agreement.

284 (10) Require a policyholder or beneficiary to use a claims
 285 center located on the premises of a tied motor vehicle repair
 286 shop.

287 (11) Enter into a favored facility agreement exclusively
 288 with its tied motor vehicle repair shops.

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289 (12) Retaliate or discriminate against a person who files
 290 an action as provided by this part.

291 (13) Retaliate or discriminate against a person who
 292 assists or participates in any manner in an investigation,
 293 judicial proceeding, or other action brought or maintained as
 294 provided by this part.

295 (14) Include earnings or losses of a tied motor vehicle
 296 repair shop in a rate filing made under chapter 627.

297 Section 9. Section 559.9227, Florida Statutes, is created
 298 to read:

299 559.9227 Conflict of interest prohibited.--Except as
 300 otherwise provided by this part, an agreement between an insurer
 301 and its tied motor vehicle repair shop must be negotiated and
 302 executed as an arm's length transaction.

303 Section 10. Section 559.9228, Florida Statutes, is created
 304 to read:

305 559.9228 Support services.--

306 (1) Notwithstanding this part, and except as provided by
 307 subsection (2), an insurer may provide support services to its
 308 tied motor vehicle repair shops if those services:

309 (a) Are priced at a level that is fair and reasonable to
 310 both the insurer and the tied motor vehicle repair shop.

311 (b) Do not directly or indirectly confer a competitive
 312 advantage to the tied motor vehicle repair shop.

313 (2) Notwithstanding subsection (1), an agreement by an
 314 insurer to provide support services to its tied motor vehicle
 315 repair shop may not create the potential for confusion among the
 316 policyholders of the insurer, other beneficiaries of an
 317 insurance policy issued by the insurer, or other parties.

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318 Section 11. Section 559.9229, Florida Statutes, is created

319 to read:

320 559.9229 Antitrust enforcement.--Sections 559.9222-
 321 559.9229 do not confer immunity from an antitrust law of this
 322 state or the United States. A sanction or penalty imposed in an
 323 action brought under this part is in addition to other relief
 324 granted on the basis of the violation of an antitrust law of
 325 this state or the United States.

326 Section 12. This act shall take effect upon becoming a
 327 law.