

By Senator Campbell

32-1176-04

1                                   A bill to be entitled  
2           An act relating to motor vehicle repair;  
3           amending s. 559.901, F.S.; conforming a  
4           cross-reference to the Florida Motor Vehicle  
5           Repair Act; amending s. 559.903, F.S.; defining  
6           terms; amending s. 559.921, F.S.; providing a  
7           civil penalty for specified violations;  
8           creating s. 559.9222, F.S.; prohibiting  
9           insurers from owning or acquiring interests in  
10          motor vehicle repair shops except under  
11          specified circumstances; creating s. 559.9223,  
12          F.S.; creating the presumption of a favored  
13          facility agreement, as defined; creating s.  
14          559.9224, F.S.; prescribing conditions for  
15          contracts between insurers and certain motor  
16          vehicle repair shops; creating s. 559.9225,  
17          F.S.; requiring certain motor vehicle repair  
18          shops to give notice to customers of  
19          relationships with insurers; creating s.  
20          559.9226, F.S.; prohibiting specified acts by  
21          insurers with respect to motor vehicle repair;  
22          creating s. 559.9227, F.S.; requiring contracts  
23          between insurers and tied motor vehicle repair  
24          shops to be negotiated as arm's length  
25          transactions; creating s. 559.9228, F.S.;  
26          prescribing permissible support services that  
27          an insurer may provide to a tied motor vehicle  
28          repair shop; creating s. 559.9229, F.S.;  
29          providing for enforcement of antitrust laws;  
30          providing an effective date.  
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1 Be It Enacted by the Legislature of the State of Florida:

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

5 559.901 Short title.--Sections 559.901-559.9229  
6 ~~559.901-559.9221~~ shall be known and may be cited as the  
7 "Florida Motor Vehicle Repair Act."

8 Section 2. Section 559.903, Florida Statutes, is  
9 amended to read:

10 559.903 Definitions.--As used in this act, the term:

11 (1) "Customer" means the person who signs the written  
12 repair estimate or any other person whom the person who signs  
13 the written repair estimate designates on the written repair  
14 estimate as a person who may authorize repair work.

15 (2) "Department" means the Department of Agriculture  
16 and Consumer Services.

17 (3) "Employee" means an individual who is employed  
18 full time or part time by a motor vehicle repair shop and  
19 performs motor vehicle repair.

20 (4) "Final estimate" means the last estimate approved  
21 by the customer either in writing or orally, as evidenced by  
22 the written repair estimate.

23 (5) "Motor vehicle" means any automobile, truck, bus,  
24 recreational vehicle, motorcycle, motor scooter, or other  
25 motor powered vehicle, but does not include trailers, mobile  
26 homes, travel trailers, trailer coaches without independent  
27 motive power, watercraft or aircraft, or special mobile  
28 equipment as defined in s. 316.003(48).

29 (6) "Motor vehicle repair shop" means any person who,  
30 for compensation, engages or attempts to engage in the repair  
31 of motor vehicles owned by other persons and includes, but is

1 not limited to: mobile motor vehicle repair shops, motor  
2 vehicle and recreational vehicle dealers; garages; service  
3 stations; self-employed individuals; truck stops; paint and  
4 body shops; brake, muffler, or transmission shops; and shops  
5 doing glass work. Any person who engages solely in the  
6 maintenance or repair of the coach portion of a recreational  
7 vehicle is not a motor vehicle repair shop.

8 (7) "Place of business" means a physical place where  
9 the business of motor vehicle repair is conducted, including  
10 any vehicle constituting a mobile motor vehicle repair shop  
11 from which the business of motor vehicle repair is conducted.

12 (8) "Motor vehicle repair" means all maintenance of  
13 and modifications and repairs to motor vehicles, and  
14 diagnostic work incident thereto, including, but not limited  
15 to, the rebuilding or restoring of rebuilt vehicles, body  
16 work, painting, warranty work, and other work customarily  
17 undertaken by motor vehicle repair shops.

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

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

27 (11) "Favored facility agreement" means an agreement  
28 between an insurer and a motor vehicle repair shop under which  
29 the insurer agrees to recommend, directly or indirectly, to  
30 its policyholders or other beneficiaries under the insurer's  
31 policies, that the policyholder or other beneficiary obtain

1 repairs at that motor vehicle repair shop or in any other way  
2 agrees to influence its policyholders or other beneficiaries  
3 under the insurer's policies to obtain repairs at that motor  
4 vehicle repair shop.

5 (12) "Insurer" means any person authorized under the  
6 Florida Insurance Code to transact insurance in this state.

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

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

16 Section 3. Paragraph (b) of subsection (4), paragraph  
17 (a) of subsection (5), and subsection (7) of section 559.921,  
18 Florida Statutes, are amended to read:

19 559.921 Remedies.--

20 (4)

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

24 1. Issuing a notice of noncompliance pursuant to s.  
25 120.695.

26 2. Imposing an administrative fine not to exceed  
27 \$1,000 per violation for each act which constitutes a  
28 violation of ss. 559.901-559.9221 ~~this part~~ or a rule or  
29 order.

30 3. Imposing an administrative fine of not less than  
31 \$1,000 or more than \$5,000 for each act that constitutes a

1 violation of ss. 559.9222-559.9229. Each day during which a  
2 violation of ss. 559.9222-559.9229 occurs is a separate  
3 violation. The amount of the administrative fine shall be  
4 based on the seriousness of the violation and must reflect the  
5 following factors:

6 a. The nature, circumstances, extent, and gravity of  
7 the act or omission that constitutes the violation;

8 b. The economic harm caused by the violation;

9 c. The history of previous violations;

10 d. The need to deter future violations by the person  
11 charged with the violation;

12 e. Efforts, if any, made to correct the violation; and

13 f. Any other factors the court considers appropriate  
14 to implement the remedial intent of this chapter.

15 ~~4.3.~~ Directing that the motor vehicle repair shop  
16 cease and desist specified activities.

17 ~~5.4.~~ Refusing to register or revoking or suspending a  
18 registration.

19 ~~6.5.~~ Placing the registrant on probation for a period  
20 of time, subject to such conditions as the department may  
21 specify.

22 (5)(a) The department or the state attorney, if a  
23 violation of this part occurs in his or her judicial circuit,  
24 shall be the enforcing authority for purposes of this part and  
25 may bring a civil action in circuit court for temporary or  
26 permanent injunctive relief and may seek other appropriate  
27 civil relief, including a civil penalty not to exceed \$1,000  
28 for each violation of ss. 559.901-559.9221 and a civil penalty  
29 of not less than \$1,000 or more than \$5,000 for a violation of  
30 ss. 559.9222-559.9229, restitution and damages for injured  
31 customers, court costs, and reasonable attorney's fees.

1           (7) If, in any proceeding brought pursuant to ss.  
2 559.901-559.9221 ~~this part~~, it is determined that the repairs  
3 and costs thereof were in fact authorized, orally or in  
4 writing, the repairs were completed in a proper manner, and  
5 the consumer benefited therefrom, then the enforcing authority  
6 may consider such factors in assessing penalties or damages  
7 and may award the reasonable value of such repairs.

8           Section 4. Section 559.9222, Florida Statutes, is  
9 created to read:

10           559.9222 Insurer interest; exclusively.--

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

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

17           (3) An insurer may relocate a tied motor vehicle  
18 repair shop described by subsection (2) but may not obtain an  
19 ownership interest in any additional facility not described by  
20 subsection (2).

21           (4) Subsections (2) and (3) are applicable to an  
22 insurer only if the insurer and its tied motor vehicle repair  
23 shop are otherwise in compliance with ss. 559.9222-559.9229.

24           (5) Unless otherwise specifically provided by this  
25 part, this part provides the exclusive authority and rules  
26 applicable to the regulation of the relations between an  
27 insurer and a tied motor vehicle repair shop.

28           Section 5. Section 559.9223, Florida Statutes, is  
29 created to read:

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1           559.9223 Favored facility agreement presumed.--An  
2 insurer is presumed to have a favored facility agreement with  
3 a motor vehicle shop in which it owns an interest.

4           Section 6. Section 559.9224, Florida Statutes, is  
5 created to read:

6           559.9224 Contractual conditions.--

7           (1) An insurer that owns an interest in a motor  
8 vehicle repair shop may use only one favored facility  
9 agreement.

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

17           (3) Except as provided by subsection (4), an insurer  
18 may not cancel a favored facility agreement until the  
19 expiration of the 30th day after the date on which the insurer  
20 provides notice to the motor vehicle repair shop of the  
21 insurer's intent to cancel the agreement. The insure shall  
22 include with the notice a statement explaining the reason for  
23 the cancellation of the agreement.

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

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1           Section 7. Section 559.9225, Florida Statutes, is  
2 created to read:

3           559.9225 Notice.--

4           (1) An insurer that owns an interest in a motor  
5 vehicle repair shop shall post the following notice in each of  
6 its tied motor vehicle repair shops:

7           "THIS MOTOR VEHICLE REPAIR SHOP IS OWNED IN  
8 WHOLE OR IN PART BY (insert name of insurer  
9 here). YOU ARE HEREBY NOTIFIED THAT YOU ARE  
10 ENTITLED TO SEEK REPAIRS AT ANY MOTOR VEHICLE  
11 REPAIR SHOP OF YOUR CHOICE."

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

15           Section 8. Section 559.9226, Florida Statutes, is  
16 created to read:

17           559.9226 Prohibited acts.--An insurer may not:

18           (1) Condition the provision of a product, service,  
19 insurance policy renewal, pricing, or other benefit on the  
20 purchase of any good or service from its tied motor vehicle  
21 repair shops.

22           (2) Share information with its tied motor vehicle  
23 repair shops which is not made available on identical terms  
24 and conditions to other motor vehicle repair shops with which  
25 the insurer has entered into a favored facility agreement.

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

28           (4) Provide its tied motor vehicle repair shops a  
29 recommendation, referral, description, advantage, or access to  
30 its policyholders or other beneficiaries under its insurance  
31 policies which is not provided on identical terms to other



1 motor vehicle repair shops with which the insurer has entered  
2 into a favored facility agreement.

3 (5) Provide a tied motor vehicle repair shop access to  
4 the insurer's products or services on terms and conditions  
5 different from those under which the insurer provides access  
6 to the same products or services to another motor vehicle  
7 repair shop with which the insurer has entered into a favored  
8 facility agreement.

9 (6) Allow a tied motor vehicle repair shop to use the  
10 insurer's name, trademark, tradename, brand, or logo in a  
11 manner different than that allowed for any other motor vehicle  
12 repair shop with which the insurer has entered into a favored  
13 facility agreement.

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

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

20 (9) Authorize or allow a person representing the  
21 insurer, whether an employee or an independent contractor, to  
22 recommend to a policyholder or other beneficiary under the  
23 insurance policy that the policyholder or other beneficiary  
24 obtain motor vehicle repair at a tied motor vehicle repair  
25 shop, except to the same extent that the person recommends  
26 other motor vehicle repair shops with which the insurer has  
27 entered into a favored facility agreement.

28 (10) Require a policyholder or beneficiary to use a  
29 claims center located on the premises of a tied motor vehicle  
30 repair shop.

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

3           (12) Retaliate or discriminate against a person who:

4           (a) Files an action as provided by this part; or

5           (b) Assists or participates in any manner in an  
6 investigation, judicial proceeding, or other action brought or  
7 maintained as provided by this part.

8           (13) Include earnings or losses of a tied motor  
9 vehicle repair shop in a rate filing made under chapter 627.

10           Section 9. Section 559.9227, Florida Statutes, is  
11 created to read:

12           559.9227 Conflict of interest prohibited.--Except as  
13 otherwise provided by this part, an agreement between an  
14 insurer and its tied motor vehicle repair shop must be  
15 negotiated and executed as an arm's length transaction.

16           Section 10. Section 559.9228, Florida Statutes, is  
17 created to read:

18           559.9228 Support services.--

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

22           (a) Are priced at a level that is fair and reasonable  
23 to both the insurer and the tied motor vehicle repair shop;  
24 and

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

27           (2) Notwithstanding subsection (1), an agreement by an  
28 insurer to provide support services to its tied motor vehicle  
29 repair shop may not create the potential for confusion among  
30 the policyholders of the insurer, other beneficiaries of an  
31 insurance policy issued by the insurer, or other parties.

1           Section 11. Section 559.9229, Florida Statutes, is  
2 created to read:

3           559.9229 Antitrust enforcement.--Sections  
4 559.9222-559.9229 do not confer immunity from an antitrust law  
5 of this state or the United States. A sanction or penalty  
6 imposed in an action brought under this part is in addition to  
7 other relief granted on the basis of the violation of an  
8 antitrust law of this state or the United States.

9           Section 12. This act shall take effect July 1, 2004.

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12   SENATE SUMMARY

13           Provides conditions on the existence and nature of  
14 relationships between insurers and motor vehicle repair  
15 shops in which they own an interest. Prohibits such  
16 interests except under limited conditions. Provides  
17 penalties for violations and prohibits certain actions  
18 with respect thereto.  
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