

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Banking and Insurance Committee

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BILL: SB 1816

SPONSOR: Senator Campbell

SUBJECT: Disclosures Relating to Motor Vehicle Repair Facilities

DATE: March 28, 2005

REVISED: 03/30/05

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>                    </u>	<u>                    </u>	<u>TR</u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>JU</u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>GA</u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

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## I. Summary:

Senate Bill 1816 mandates that collision centers, insurance claims centers, and insurance adjusters' offices display a disclosure stating that a person in Florida has a right to choose any repair facility for the repair of his or her vehicle. If an insurer provides information about a repair facility, the insurer must inform the person of this right. The bill provides that this does not create a private right or cause of action. The disclosure must also state that if an insured or claimant selects a repair facility and the insurer owns an interest in that facility, the adjuster for the motor vehicle may not be employed by the repair facility or have any direct authority over that facility's recommendations or decisions relating to the repair of the vehicle.

The bill requires that no later than January 10th of each year, through 2010, each repair facility in which an insurer owns an interest and that makes repairs or replaces the non-mechanical interior body parts of a damaged motor vehicle must file a report with the Office of Insurance Regulation (OIR). The report must contain the following information:

- the number of motor vehicles repaired, including the dollar amount of those repairs, by the repair facility in the previous calendar year in which the motor vehicle owner was insured by or was a claimant of the insurer that owns an interest in the repair facility; and,
- the same information provided above, but as a percentage of the total number of vehicles repaired, or the total dollar amount of those repairs, by that repair facility.

The legislation mandates that the OIR maintain this information and make it available annually, along with any violations of these provisions, to the substantive committees of the Florida Senate and House of Representatives.

The bill provides that if, after a hearing, the OIR finds that a person or repair facility has engaged in any illegal or unfair method of competition or an unfair or deceptive act under this bill, the OIR shall order such person or facility to cease and desist from the proscribed acts. It further provides that the OIR may impose civil penalties up to \$50,000 in any 6-month period or, if such persons or facilities intentionally violate the provisions of the bill, impose a penalty up to \$100,000 in any 6-month period. The legislation provides that no order of the OIR, order of a court, or holding of a hearing may relieve or absolve any person affected by the order or hearing from any other liability, penalty or forfeiture under law.

This bill creates undesignated sections of the Florida Statutes.

## **II. Present Situation:**

### **Florida Motor Vehicle Repair Act**

The Florida Motor Vehicle Repair Act (Act) is contained in part IX of chapter 559, F.S.<sup>1</sup> The Act requires all motor vehicle repair shops to register with the Department of Agriculture and Consumer Services (department) and it requires repair shops to provide estimates for repairs, invoices for completed repairs, and makes it unlawful for the cost of repairs to exceed the estimate by specified amounts. The Act declares various provisions are violations of the Act, including making or charging for repairs that are not authorized by the customer, misrepresenting that certain parts and services are necessary to repair a vehicle, willfully departing from accepted practices and professional standards, and more. The Act currently does not contain any regulations regarding relationships between insurers and motor vehicle repair shops. As of March 8, 2005, there are 21,473 motor vehicle repair shops registered with the department.

### **Relationships Between Motor Vehicle Repair Shops and Insurers**

Very few repair shops in Florida are owned wholly or in part by insurers; however, one large insurer (Allstate Insurance Company) does own 10 facilities in Florida.<sup>2</sup> Allstate owns such shops under the Sterling name, of which 3 are located in Jacksonville, 2 in Orlando, 2 in Tampa/St. Petersburg, and 1 each in Sarasota, West Palm Beach, and Pompano. Representatives with Allstate assert that through these ownership relationships, it can ensure that their customers receive high quality service while the company can manage its costs. Allstate representatives say the insurer discloses its ownership affiliation to its customers and informs them of their right to choose any repair facility, while also describing benefits of using the affiliated repair facility, such as a lifetime guarantee on the repair, arranging a rental vehicle on site, and a guaranteed completion date.

Many insurers enter into favored facility agreements with various motor vehicle repair shops. For example, State Farm Mutual Automobile Insurance Company has agreements in Florida (called Service First agreements) with repair shops, but insureds and claimants may use any repair facility. Such agreements provide favorable economic terms to insurers in return for referring

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<sup>1</sup> Sections 559.901-559.9221, F.S.

<sup>2</sup> Committee staff was unable to determine if any other insurer owned vehicle repair facilities in the state.

customers to the garage. There are no specific statutes or rules regarding the practice of insurers steering customers to certain repair shops.

In 2003, Texas enacted legislation that prohibits insurers from owning an interest in a motor vehicle repair shop while grandfathering in shops already owned by insurers prior to the bill's passage.<sup>3</sup> Currently, Allstate has challenged the Texas law on first amendment and commerce clause grounds and anticipates a ruling by the trial judge in June.<sup>4</sup>

### **Unfair Trade Practices**

Under current law, insurers are prohibited from committing various activities defined under the unfair methods of competition and unfair or deceptive practices acts (s. 626.9541, F.S.). Such activities include misrepresentations in advertising, making false statements, defamation, illegal dealings in premiums, and many others. Insurers may be subject to suspension or revocation of their certificates of authority or fines for violations of the unfair trade practice provisions. The OIR may suspend or revoke the certificate of authority of an insurer for a violation of any provision of the Insurance Code (s. 624.418, F.S.). The OIR may impose an administrative fine on an insurer that violates any unfair trade practice of up to \$2,500 for each nonwillful violation, not to exceed \$10,000 for all nonwillful violations arising out of the same action. For willful violations, the maximum fine is \$20,000 for each violation, not to exceed \$100,000 for all willful violations arising out of the same action (s. 626.9521, F.S.).

The unfair trade practice laws authorize the OIR to issue cease and desist orders against insurers that violate those provisions (s. 626.9581, F.S.). If an insurer violates the OIR's cease and desist order, the OIR may impose a penalty not to exceed \$50,000 (s. 626.9601, F.S.). Insurers may be subject to criminal prosecution as a second degree misdemeanor for willfully violating the unfair trade practice acts (s. 624.15, F.S.). An insurance agent that violates this section is subject to suspension or revocation of his or her license and an administrative penalty of up to \$500 or, for willful violations, up to \$3,500, under the authority of the Department of Financial Services (s. 626.681, F.S.).

### **Insurance Adjusters**

Through the motor vehicle claims adjusting process, insurers determine whether a covered loss has occurred and the amount to be paid for the loss. Adjusters are regulated under Part VI of chapter 626, F.S. There are three different types of adjusters in Florida: company adjusters, independent adjusters and public adjusters. A *company adjuster* is a person employed on the insurer's staff of adjusters and who undertakes on behalf of the insurer to ascertain and determine the amount of any claim, loss, or damage payable under the insurance contract. An *independent adjuster* is a person who is self-employed and who undertakes the same duties on behalf of an insurer. A *public adjuster* is a person, who for money or commission, files an insurance claim form for an insured or third-party claimant or acts on behalf of such insured or claimant. According to representatives with the OIR, there is no provision in law which prohibits an adjuster from being employed by a repair facility in which an insurer owns an interest. There

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<sup>3</sup> See, Texas Occupations Code, Chapter 2306.

<sup>4</sup> See *Allstate Insurance Co. and Sterling Collision Center, Inc. vs. Abbot*, No. 3:03-CV-2187-K (N.D. Tex. Dec. 11, 2003)

is also no law that precludes an adjuster from having direct authority over a facility's recommendations or decisions relating to the repair of the insured's or claimant's vehicle.

### III. Effect of Proposed Changes:

**Section 1.** Creates a new, undesignated section of the Florida Statutes. The bill requires a disclosure to be posted in visible sight in the customer area of any collision center, insurance claims center, or insurance adjuster's office. The notice must state that a person in Florida has a right to choose any repair facility for the repair of his or her vehicle. If an insurer provides information about a repair facility, the insurer must inform the person of this right at the same time as providing such information. The bill provides that this provision does not create a private right or cause of action to or on behalf of any person.

The disclosure must also state that if an insured or claimant selects a repair facility to repair his or her vehicle and the insurer owns an interest in that repair facility, the adjuster for the motor vehicle may not be employed by the repair facility or have any direct authority over that facility's recommendation or decisions relating to the repair of the insured's or claimant's vehicle.

**Section 2.** Creates a new, undesignated section of the Florida Statutes. The bill requires that no later than January 10th of each year, through January 10, 2010, each repair facility in which an insurer owns an interest and that makes repairs or replaces the non-mechanical exterior or interior body parts of a damaged motor vehicle must file a report to the Director of the Office of Insurance Regulation (OIR). The report must contain the following information:

- The number of motor vehicles repaired, including the dollar amount of those repairs, by the repair facility in the previous calendar year in which the motor vehicle owner was insured by or was a claimant of the insurer that owns an interest in the repair facility; and,
- The number of motor vehicles repaired, including the dollar amount of those repairs, by the repair facility in the previous calendar year in which the motor vehicle owner was insured by or was a claimant of the insurer that owns an interest in the repair facility, as a percentage of the total number of vehicles repaired, or the total dollar amount of those repairs, by that repair facility.

The OIR must maintain the information submitted by the repair facility and make the information, as well as any violations of this act, available annually to the substantive committees of the Florida House of Representatives and the Senate.

**Section 3.** Creates a new, undesignated section of Florida Statutes relating to cease and desist powers and administrative penalty authority within the OIR. Specifically, the legislation provides that after a hearing, if the OIR finds that a person or a repair facility has engaged in illegal or unfair method of competition or an unfair or deceptive act or practice under this act, the OIR shall order the person or facility to cease and desist from the proscribed acts or practices. The OIR may impose a civil penalty of not more than \$1,000 for each act or violation, but not to exceed an aggregate penalty of \$50,000 in any 6-month period, unless the person or facility

intentionally violates this provision, in which case, the OIR may impose a civil penalty of up to \$5,000 for each act or violation, but not to exceed an aggregate penalty of \$100,000 in any 6-month period.

The legislation provides that no order of the OIR, order of a court, or holding of a hearing may relieve or absolve any person affected by the order or hearing from any other liability, penalty or forfeiture under law.

**Section 4.** Provides that the act will take effect July 1, 2005.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

As described in more detail in Related Issues, below, it is not clear what acts or practices are prohibited by this bill or what acts or practices would be subject to civil penalties. For these reasons, the bill may be unconstitutionally vague.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurance companies with affiliated repair shops will be subject to the costs of tracking and matching policyholder claims with such repair facilities, and annually reporting such information to OIR. Such increased costs may be passed on as increased premiums to policyholders.

If the bill is interpreted as prohibiting an insurer's adjuster from having direct authority over the decisions of a repair facility that is affiliated with the insurer (see Related Issues, below), it may preclude the involvement of the adjuster in negotiating or discussing the proper method of repair.

Any person (such as an insurer) or facility is subject to penalties of \$1,000 for a violation of this act or violation, but not to exceed an aggregate penalty of \$50,000 in any 6-month period and, for an intentional violation, up to \$5,000 for each act or violation, but not to exceed an aggregate penalty of \$100,000 in any 6-month period.

**C. Government Sector Impact:**

Representatives with OIR state that the legislation would have a “significant” fiscal impact to replicate data collection, compliance, and enforcement actions that are within the current scope of regulations administered by the Department of Agriculture.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 1 of the bill requires a disclosure that if an insurer owns an interest in a repair facility, that the adjuster may not be employed by the repair facility or have any direct authority of the facility’s recommendations or decisions. However, there is no substantive prohibition in current law or in the bill against this practice.

Section 3 provide for penalties against any person or repair facility that has engaged in “any illegal or unfair method of competition or an unfair or deceptive act or practice under this act.” It is not clear if the penalties are limited to a violation of this act. Even if so limited, it is not clear what is prohibited by this act, as noted above. This section also requires that there must be a hearing before such penalties can be imposed. It may not be clear if this is intended to add a requirement that does not already apply under the Administrative Procedures Act, ch. 120, F.S.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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