

# 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.)

BILL: SB 2692

SPONSOR: Senator Campbell

SUBJECT: Motor Vehicle Repair

DATE: March 30, 2004 REVISED: \_\_\_\_\_

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

## I. Summary:

Senate Bill 2692 mandates that an insurer cannot own or acquire an interest in a motor vehicle repair shop. Insurers with tied motor vehicle repair shops that were open or upon which construction commenced on January 1, 2004, may maintain their ownership interest and operate the facility. Conditions are placed on contracts between insurers and motor vehicle repair shops. The bill creates a presumption that insurers that own an interest in a motor vehicle repair shop are presumed to have a favored facility agreement.

The bill prohibits certain practices by insurers including, but not limited to: (1) conditioning the provision of a product, service, insurance policy renewal, pricing or other benefit on the purchase of a good or service from its tied motor vehicle repair shop; (2) recommending to a policyholder or beneficiary to obtain motor vehicle repairs at a tied motor vehicle repair shop, except to the same extent that recommendations are made to have repairs done at other motor vehicle repair shops that are favored facilities; (3) providing tied motor vehicle repair shops with advantages in access to policyholders or products and services that are not provided on identical terms to motor vehicle repair shops with favored facility agreements; (4) require a policyholder or beneficiary under a policy to obtain a damage estimate or use a claims center at a tied motor vehicle repair shop; (5) subsidize or engage in joint marketing with a tied motor vehicle repair shop; or (6) only permit entering into a favored facility agreement with a tied facility.

The bill provides that for each violation of ss. 559.9222-559.9229, F.S. (the sections created by this bill) an administrative fine of \$1,000 to \$5,000 may be imposed. Each day during which a violation occurs is considered separate violation. The sections created by the bill do not confer immunity from Florida or federal antitrust laws. Sanctions or penalties brought under this part are in addition to any relief granted on the basis of violating Florida or federal antitrust law.

This bill amends sections 559.903 and 559.921 of the Florida Statutes.

The bill creates the following sections of the Florida Statutes: 559.9222, 559.9223, 559.9224, 559.9225, 559.9226, 559.9227, 559.9228, and 559.9229.

## **II. Present Situation:**

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

The Florida Motor Vehicle Repair Act is contained in part IX of ch. 559, F.S. The act requires all motor vehicle repair shops to register with the Department of Agriculture and Consumer Services (department). 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 that various acts are violations of the act, including making or charging for repairs that are not authorized by the customer, misrepresenting that certain parts and service 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.

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

As of March 29, 2004, there are 20,549 motor vehicle repair shops registered with the Department of Agriculture and Consumer Services. Both proponents and opponents of the bill state that very few of these shops are owned wholly or in part by insurers,<sup>1</sup> but that many insurers enter into favored facility agreements with various motor vehicle repair shops. Such agreements often act in a similar fashion to a preferred provider arrangement in that they provide favorable economic terms to insurers in return for referring customers to the garage. Representatives from the Office of Insurance Regulation state that there are currently no regulations on the practices that insurers may engage in regarding the steering of customers to certain repair shops.

In 2003, Texas enacted legislation that prohibits insurers from owning an interest in a motor vehicle repair shop.<sup>2</sup> The Texas act is nearly identical to SB 2692, and prevents 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. Currently, the Texas legislation is the subject of litigation and Allstate Insurance/Sterling Collision been granted a preliminary injunction regarding the advertising and disclosure provisions of the Texas statute.<sup>3</sup>

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<sup>1</sup> Not all insurers have chosen to own motor vehicle repair shops. An example of an insurer that has is Allstate, which owns 9 such shops in Florida under the Sterling name, of which 3 are located in Jacksonville, 2 in Orlando, 2 in Tampa/St. Petersburg, 1 in Sarasota, and 1 in West Palm Beach.

<sup>2</sup> See TEXAS OCCUPATIONAL CODE, Chapter 2306.

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

### III. Effect of Proposed Changes:

**Section 1.** Makes a technical change to include the new sections created by the bill in the Florida Motor Vehicle Repair Act.

**Section 2.** Amends s. 559.903, F.S., by creating definitions for six terms under the Florida Motor Vehicle Repair Act. The term “arm’s length transaction” means a transaction involving two parties having substantially equal bargaining power who act in their own interest in negotiating a transaction. “Claims center” is defined as 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. A “favored facility agreement” is defined as an agreement between an insurer and auto repair shop under which the insurer directs or influences its policyholders and beneficiaries to have repairs done at that motor vehicle repair shop. “Insurer” is defined as a person authorized to transact insurance in Florida. “Support services” are services provided internally by an insurer, parent company, or a separate affiliate (created to provide basic corporate support) to its affiliates and subsidiaries. The term does not include services related to operating a motor vehicle repair shop that have minimal or no value to any other type of business.

**Section 3.** Amends s. 559.921, F.S., which provides the remedies for customers who are harmed by a violation of the Florida Motor Vehicle Repair Act. If the Department of Agriculture and Consumer Services finds that a motor vehicle repair shop violated ss. 559.901-559.9921, F.S., (the provisions of part IX currently in the statutes) then the current remedies under law apply, including an administrative fine of \$1,000 or less. However, the bill provides that for each violation of ss. 559.9222-559.9229, F.S. (the sections created by this bill) an administrative fine of \$1,000 to \$5,000 may be imposed. Each day during which a violation occurs is considered separate violation. Factors are provided that are to determine the amount of the administrative fine based on the seriousness of the violation.

**Section 4.** Creates s. 559.9222, F.S., which mandates that an insurer cannot own or acquire an interest in a motor vehicle repair shop. The bill “grandfathers in” insurers with tied motor vehicle repair shops that were open or upon which construction commenced on January 1, 2004, which insurers may maintain their ownership interest and operate the facility. The tied motor vehicle repair shop may be relocated, but an insurer cannot obtain ownership in additional facilities. The provisions of the bill regulating dealing between insurance companies and tied motor vehicle repair shops (ss. 559.9222-559.9229, F.S.) apply to facilities that have been “grandfathered in.” This section also states that part IX provides the exclusive authority and rules for regulating relationships between insurers and a tied motor vehicle repair shop.

**Section 5.** Creates s. 559.9223, F.S., which creates a presumption that insurers that own an interest in a motor vehicle repair shop are presumed to have a favored facility agreement (the insurer is directing or influencing its policyholders to have repairs done at that shop).

**Section 6.** Creates s. 559.9224, F.S., which places conditions on contracts between insurers and motor vehicle repair shops. An insurer that owns an interest in a motor vehicle repair shop may only use one favored facility agreement. A second condition is that the terms under which an insurer enters into a favored facility agreement must be identical for all motor vehicle repair

shops, including a tied motor vehicle repair shop. Terms may vary to implement technical differences related to geography and legitimate business factors. An insurer must give 30 days notice to a motor vehicle repair shop before canceling a favored facility agreement, unless the insurer, an insurer's policyholder, or a policy beneficiary establishes and reasonably believes the repair shop is acting fraudulently in its dealings.

**Section 7.** Creates s. 559.9225, F.S., which requires that insurers owning an interest in a motor vehicle repair shop must post in a prominent place a notice that declares the repair shop is owned by the insurer and that the policyholder may seek repairs at any motor vehicle repair shop.

**Section 8.** Creates s. 559.9226, F.S., which prohibits certain actions by insurers. An insurer cannot:

- Condition the provision of a product, service, insurance policy renewal, pricing or other benefit on the purchase of a good or service from its tied motor vehicle repair shop.
- Cannot share information with its tied motor vehicle repair shops not made available on identical terms to other motor vehicle repair shops that are favored facilities.
- Engage in joint marketing with its tied motor vehicle repair shops.
- Provide tied motor vehicle repair shops with advantages in access to policyholders that are not provided on identical terms to its favored facilities.
- Provide its tied motor vehicle repair shops with access to the insurer's products or services on terms and conditions different from those under which the same products or services are offered to favored facilities.
- Allow a tied motor vehicle repair shop to use the insurer's name, trademark, trade name, brand or logo in a manner different than allowed for favored facilities.
- Subsidize business activities or operating expenses of a tied motor vehicle repair shop.
- Directly or indirectly require a policyholder or beneficiary under a policy to obtain a damage estimate at a tied motor vehicle repair shop.
- Recommend to a policyholder or beneficiary to obtain motor vehicle repairs at a tied motor vehicle repair shop, except to the same extent that recommendations are made to have repairs done at other motor vehicle repair shops that are favored facilities.
- Require a policyholder or beneficiary to use a claims center located on the premises of a tied motor vehicle repair shop.
- Only enter into favored facility agreements with tied motor vehicle repair shops.
- Retaliate or discriminate against persons who file an action under this part or who assist or participate in an investigation, judicial proceeding, or other action brought under this part.
- Include the earnings or losses of a tied motor vehicle repair shop in a ch. 627, F.S., rate filing.

**Section 9.** Creates s. 559.9227, F.S., which requires that agreements between an insurer and its tied motor vehicle repair shop must be negotiated and executed as an arm's length transaction.

**Section 10.** Creates s. 559.9228, F.S., which allows an insurer to provide support services to its tied motor vehicle repair shops if the services are priced at a fair and reasonable level to the insurer and the tied motor vehicle repair shop and do not directly or indirectly confer a

competitive advantage to the tied motor vehicle repair shop. However, a support services agreement with a tied motor vehicle repair shop may not create the potential for confusion among policyholders or policy beneficiaries of the insurer, or other parties.

**Section 11.** Creates s. 559.9229, F.S., which states that ss. 559.9222-559.9229, F.S., do not confer immunity from Florida or federal antitrust laws. Sanctions or penalties brought under this part are in addition to any relief granted on the basis of violating Florida or federal antitrust law.

**Section 12.** States that this act shall take effect on July 1, 2004.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The proponents and opponents of this bill have divergent opinions on what the economic impact of this legislation will be.

Proponents of the bill claim that if insurers are allowed to own and open motor vehicle repair shops, it will have the effect of running many garages out of business. They state that in the collision repair industry, insurance companies account for around 95 percent of the business in the field. If the practice of insurers recommending that repairs be made at a tied repair shops becomes widespread, it likely will have the effect of reducing the amount of business received by independent repair shops. Proponents of the bill fear that without this legislation, many smaller motor vehicle repair shops will be run out of business, eventually resulting in insurance companies monopolizing the field. The result will be to harm local economies and small business owners.

Supporters of the bill also assert that the bill will provide benefits to consumers. They argue that the bill will foster consumer choice by prohibiting insurers from only recommending repair shops that the insurer owns. However, it should be noted that under

the bill insurance companies are permitted to continue entering into preferred facilities agreements, and to recommend such facilities to their insureds. Proponents also state that the bill will prevent insurance companies from completely controlling the quality of repair work that is performed and help to prevent abuses.

Opponents of the bill state that it will have a negative economic impact on both insurance companies and insureds. Opponents of the bill say that it interferes with an insurance company's right to enter into contracts with certain repair shops and to organize its business relationships in ways that are advantageous. They note that many businesses are expanding into other fields so as to improve efficiency and reduce costs. To the extent insurers are able to minimize their costs, consumers will benefit from lower insurance costs. Opponents of the bill also note that there are far more independent motor vehicle repair shops than tied repair shops, and that there is no indication that current practices are likely to result in insurance companies dominating the collision repair business. Rather, insurers state that tied repair shops promote competition by providing an additional option for repairs.

In addition to economically harming insurers, opponents of the bill also assert that it is harmful to consumers. Insurers state that offering repair shops that provide quality, efficient repairs will result in savings to consumers. Additionally, consumers may still choose where they want repairs done, but that the tied facilities provide policyholders with another option for having repairs done. Opponents of the bill say that limiting the creation of tied motor vehicle repair shops and not allowing insurers to recommend such shops will eliminate consumer savings. Insurers state that they have strong motivation to provide high quality repairs to their policyholders because doing so keeps their customers happy, thus it will be in the best interest of the insurer to ensure that its tied repair shops provide quality repairs in a prompt fashion. This, in turn, will increase competition and improve the quality of all repair shops in the state.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.